Supreme Court, U.S.
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No. 97-1389

In The

Supreme Court of the United States

October Term, 1997

JOHN Z. DELOREAN and ECCLESIASTES 9:10-11-12, INC., a Delaware Corporation (formerly known as Logan Manufacturing), a Delaware Corporation, Jointly and Severally,

Petitioners,

vs.

MORGANROTH & MORGANROTH, a Michigan General Partnership, and MAYER MORGANROTH,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the Sixth Circuit was correct in affirming the jury verdict rendered in favor of Morganroth on claims for fraud, breach of contract, and account stated based on the finding that the verdict was not the product of passion or prejudice, but was supported by overwhelming and compelling evidence?

TABLE OF CONTENTS

	Page
Question Presented	i
Table of Contents	ii
Table of Citations	iv
Statement of the Case	1
A. Nature of the Case/Course of Proceedings/ Disposition.	1
B. Relevant Facts.	2
Reasons for Denying the Writ	9
I. The Sixth Circuit Correctly Determined That No Reason Exists For Reviewing The District Court's Rulings Denying The Pretrial Motions To Dismiss The RICO Claim Because The Same Evidence Would Have Been Admitted Regardless Of The Presence Of A RICO Claim.	10
A. DeLorean's and Logan's Consistent Failure to Object to the Admission of Such Evidence Operated as a Waiver.	11
B. The Challenged Evidence Was Admissible Pursuant to Rule 404(b) as to Morganroth's Claim For Fraud.	11
C. The Challenged Evidence Was Admissible to Rebut DeLorean's and Logan's Affirmative Defenses and Recoupment Defenses.	13

Contents

Page

II. The Sixth Circuit Also Correctly Concluded That No Reason Exists For Reviewing The District Court's Rulings Denying The Pretrial Motions To Dismiss The RICO Claim Because Overwhelming Evidence Supported The Jury Verdict On The Claims Of Fraud, Breach Of Contract, And Account Stated. 15

A. Overwhelming Evidence Supported the Jury's Verdict on Morganroth's Breach of Contract Claim. 16

B. Overwhelming Evidence Supports the Jury Verdict on Morganroth's Fraud Claim. ... 20

C. Overwhelming Evidence Supports the Jury Verdict on Morganroth's Account Stated Claim. 23

III. Even If It Were Somehow Necessary To Review The District Court's Denial Of The Pretrial RICO Motions, The District Court Did Not Abuse Its Discretion In Denying Such Motions In Any Event. 24

A. The Supposed Deficiencies Regarding the RICO Claim Raised on Appeal to the Sixth Circuit Missed the Mark. 24

1. Morganroth provided sufficient legal and factual support to withstand the pretrial motions to dismiss. 24

Contents

Page

2. Requisite racketeering activity was well pled and supported by sufficient evidence to withstand motions to dismiss and/or summary judgment. . . 26

B. No Compelling Reasons Exist For Granting Review. 28

Conclusion 29

TABLE OF CITATIONS

Cases Cited:

Adkins v. GAF Corp., 923 F.2d 1225 (6th Cir. 1991) . 19

Cathey v. John Manville Sales Corp., 776 F.2d 1565 (6th Cir. 1985) 19

City of Cleveland v. Peter Kiewit Sons Co., 624 F.2d 749 (6th Cir. 1980) 13

Dana Corp. v. Blue Cross Blue Shield Mut., 900 F.2d 882 (6th Cir. 1990) 26

Holmes v. Securities Investor Protection Corp., 503 U.S. 258 (1992) 28

Newmyer v. Phitaletic Leasing, Ltd., 888 F.2d 385 (6th Cir. 1989) 26

Contents

Page

TCP Indus., Inc. v. Uniroyal, Inc., 661 F.2d 542 (6th Cir. 1981) 12, 13

United States v. Anendondo-Morales, 624 F.2d 681 (5th Cir. 1980) 12

United States v. Ausmus, 774 F.2d 722 (6th Cir. 1985) 12

United States v. Blankenship, 775 F.2d 735 (6th Cir. 1985) 12

United States v. Ellzey, 874 F.2d 324 (6th Cir. 1989) . 12

United States v. LeBlanc, 612 F.2d 1012 (6th Cir. 1980) 11

Statutes Cited:

18 U.S.C. § 1341 26

18 U.S.C. § 1343 26

18 U.S.C. § 1952 26

18 U.S.C. § 1956 26

18 U.S.C. § 1957 26

18 U.S.C. § 1961(1) 26

Contents

	Page
18 U.S.C. § 1962	25
18 U.S.C. § 1962(a)	25
18 U.S.C. § 1962(b)	25
18 U.S.C. § 1962(c)	25
18 U.S.C. § 1962(d)	25
Rules Cited:	
Fed. R. Civ. P. 11	2
Fed. R. Civ. P. 12(b)(6)	24
Fed. R. Civ. P. 50(a)	25
Fed. R. Civ. P. 61	13
Fed. R. Evid. 103(a)	11, 13
Fed. R. Evid. 404(b)	11, 12
U.S. Supreme Court Rule 10	9

Contents

Page

APPENDIX

Appendix A — Transcript Of Jury Verdict Dated January 4, 1995 ..... 1a

Appendix B — Transcript Of Trial Proceedings Dated September 22, 1994 ..... 12a

Appendix C — Transcript Of Trial Proceedings Dated September 23, 1994 ..... 29a

Appendix D — Transcript Of Trial Proceedings Dated September 28, 1994 (AM) 46a

Appendix E — Transcript Of Trial Proceedings Dated December 1, 1994 (AM) 63a

Appendix F — Transcript Of Trial Proceedings Dated December 1, 1994 (PM) 65a

Appendix G — Transcript Of Trial Proceedings Dated December 6, 1994 ..... 75a

Appendix H — Transcript Of Trial Dated December 22, 1994 ..... 81a

Appendix I — Personal Financial Statement Of John Z. DeLorean Dated January 15, 1993 ..... 84a

Appendix J — Stipulation Of Facts 86a

Contents

Page

Appendix K — Plaintiffs' Brief In Opposition To Motion To Dismiss Or Stay Entire Action Or Alternatively To Dismiss Count I From The Complaint In The Instant Action For Failure To State A Claim, Or Alternatively For More Definite Statement Of Count I Of The Complaint In The Instant Action Dated June 21, 1993 ..... 100a

Appendix L — Plaintiffs' Combined Brief In Opposition To Motion For Partial Summary Judgment Against Count I And Motions For Judgment On The Pleading Against Count I And II Dated February 14, 1994 .. 124a

Appendix M — Plaintiffs' Brief In Opposition To Defendants' Motion For Separate Trials Dated February 14, 1994 ..... 192a

Appendix N — Plaintiffs' Brief In Opposition To Defendants' Motion For Judgment As A Matter Of Law (Fed. R. Civ. P. 50(a)) Re Plaintiffs' RICO Claim Dated December 14, 1994 ..... 207a

STATEMENT OF THE CASE

A. Nature of the Case/Course of Proceedings/Disposition.

The Petition misrepresents the nature of the case and course of proceedings below.

Attorney, Mayer Morganroth, and his law firm, Morganroth & Morganroth (collectively, "Morganroth"), filed the subject action against John Z. DeLorean ("DeLorean") and Ecclesiastes 9:10-11-12, Inc. f/k/a Logan Manufacturing Co. (hereinafter, "Logan"), consisting of seven claims: (1) RICO; (2) common law fraud; (3) breach of express contract; (4) breach of implied contract; (5) account stated; (6) quantum meruit; and (7) unjust enrichment.

DeLorean and Logan filed a sham counter-complaint alleging malpractice, which was dismissed on motion. Nevertheless, DeLorean and Logan asserted affirmative defenses and recoupment defenses challenging every aspect of Morganroth's representation. These defenses survived and were fully litigated at trial notwithstanding dismissal of the counter-complaint.

On September 8, 1994, trial of the instant action commenced, and after 42 days of testimony, evidence, argument by counsel, instructions, and deliberations, the jury returned its verdict on January 4, 1995 in favor of Morganroth with respect to the claims for fraud, breach of express contract and account stated, and in favor of DeLorean and Logan on Morganroth's RICO claim. (App. A). The jury also found against DeLorean and Logan on their affirmative defenses and recoupment defenses, and did not render a verdict on Morganroth's quasi contract claims because they found the existence of an express contract. (App. at 4a-6a).

By orders dated April 17, 1995, the District Court denied DeLorean's and Logan's post-judgment motions for attorney fees on the RICO claim, relief from judgment, and for new trial, but granted DeLorean's motion to alter or amend the judgment by striking the punitive damages award.

DeLorean and Logan thereafter filed an appeal with the Sixth Circuit alleging that they were prejudiced by virtue of the District Court's denial of their pretrial motions to dismiss the RICO claim, that the jury verdict on Morganroth's claims for fraud, breach of contract, and account stated was against the weight of the evidence, and that the District Court erroneously denied DeLorean's and Logan's motion for Rule 11 sanctions on the RICO claim. Morganroth filed a cross-appeal regarding the District Court's post-judgment order striking the punitive damage award.

After full briefing and oral argument, the Sixth Circuit affirmed: (1) the jury verdict in favor of Morganroth; (2) the District Court's denial of DeLorean's and Logan's post-trial motion for Rule 11 sanctions on the RICO claim; and (3) the District Court's post-judgment order striking the punitive damage award. (Pet. App. A). Subsequently, DeLorean and Logan filed a motion for reconsideration with the Sixth Circuit, which was denied on October 14, 1997. (Pet. App. B).

B. Relevant Facts.

The Petition misrepresents virtually all of the facts relevant to this case. A correct recitation of the relevant facts is set forth below.

This case tells the story of an attorney, Morganroth, who successfully devoted over ten years of his life working day and night for two clients, DeLorean and Logan, to the detriment of his large legal practice in order to provide legal representation to fight for DeLorean's freedom and to save tens of millions of dollars in assets of DeLorean and Logan. (R.287 at 162, 164-165; R.250 at 66; R.277 at 6-13; R.271 at 131; R.300 at 22-24, 29-30; R.301 at 77-78, 119-123, 148-161). When Morganroth's representation ceased in February 1993, DeLorean was free from criminal charges in the United States (R.289 at 149-150), and possessed a net worth of in excess of $51 million (App. at 13a-19a, 22a-28a, 84a-85a), but DeLorean and Logan had defrauded Morganroth out of in excess of $5 million in legal fees and expenses.

DeLorean first contacted Morganroth in 1982, and indicated that he was interested in Morganroth acting as his legal counsel. (R.256 at 33-34). At the time, DeLorean already had been arrested, and sought counsel in connection with the California criminal cocaine case and with respect to various civil actions which were on the horizon. (R.256 at 33-37; R.287 at 162-164). A formal arrangement was discussed where DeLorean orally agreed to pay Morganroth's customary hourly rate in accordance with Morganroth's standard practice. (R.256 at 37-38, 47, 49-50; R.277 at 14-16).

In early 1983, DeLorean asked if Morganroth was available to serve as his lead trial counsel in the criminal cocaine case, but Morganroth had to decline because he already was committed to handle another trial. (R.256 at 38-41). DeLorean then asked Morganroth to focus his attention on the possibility of suing the British and United States governments, to examine papers and documents regarding existing and potential problems, and to try to settle claims that had been filed against DeLorean and Logan by the Trustee in the DMC bankruptcy proceedings (the "Trustee"). (*Id.* at 41-42, 44-46). During the discussions, DeLorean re-confirmed that Morganroth would be paid his customary hourly rate. (*Id.* at 47).

Just a couple of months later, an avalanche of cases tumbled down on DeLorean and Logan, including adversary proceedings, district court proceedings, and tax proceedings. (*Id.* at 48, 51-52, 56-59). In connection therewith, restraining orders were entered against DeLorean and Logan with respect to their assets. (*Id.* at 48-49).

Although Morganroth was not counsel of record in 1983 and 1984, he performed substantial legal services for DeLorean and Logan, and he continued to provide consultation and advice to DeLorean regarding the defense of the California criminal cocaine case which was tried in 1984. (*Id.* at 60-61, 86-87).

In 1984, district court proceedings pending against DeLorean and Logan around the country were consolidated in multi-district litigation, Judge George E. Woods presiding. (*Id.* at 59-60).

In 1985, Morganroth took over as sole litigation counsel for DeLorean and Logan in all proceedings, including a criminal warrant issued in Switzerland, and became counsel of record. (*Id.* at 60-66, 87; R.288 at 58, 61-62, 69-71). The civil cases were massive, most of which each sought $100 million per count and in the aggregate $500 million per case. (R.256 at 57; R.288 at 84).

From the time Morganroth took over the multitude of civil actions through September 1987, enormous discovery and motion practice was conducted. (R.256 at 97-99, 131; R.288 at 86). Morganroth was unassisted in his representation of DeLorean and Logan, while the opposition had dozens of attorneys working on the matters. (R.288 at 66-69; R.300 at 29-30).

DeLorean also was indicted in Detroit on criminal racketeering and tax charges, and a trial was conducted in 1986. (R.256 at 147, 150). Morganroth coordinated the defense of the case and worked on it seven days a week. (R.256 at 149-151; R.287 at 159-162). Morganroth even was responsible for bringing in the key evidence believed to have turned around the case and resulted in acquittal. (R.256 at 152-157; R.287 at 160-161; R.289 at 149-152).

In 1987, DeLorean and the Trustee commenced settlement negotiations, at the strong suggestion of Judge Woods and Judge Graves, regarding a multitude of complex cases brought by the Trustee. A marathon negotiating session involving 12-14 attorneys on behalf of the Trustee on the one hand, and Morganroth, attorney Thomas Kimmerly ("Kimmerly"), and DeLorean on behalf of DeLorean and Logan on the other hand, lasted approximately 24-35 straight hours, and resulted in a settlement of the Trustee's claims. (R.294 at 61-66; R.288 at 123-125, 132).

DeLorean was extremely pleased with the settlement of the Trustee's claims as he actually received a net gain. (R.294 at 72, 103, 120-123; R.288 at 122-123; R.290 at 29-31; R.289 at 157; R.301 at 60-61). Prior to Morganroth's representation, DeLorean had made offers to personally pay $29 million to settle with the Trustee, and DeLorean would not have received any of the assets held by the DeLorean Family Trust. (R.288 at 115-116). But in the settlement, DeLorean received all of the assets from the DeLorean Family Trust worth $25-$50 million including Logan, even though DeLorean had no ownership interest or rights therein whatsoever (R.294 at 119; R.288 at 79-83, 95-102, 107-108); and he also received $2 million in cash, the $800,000 Bridgewater Escrow, patents, trademarks and tradenames valued by DeLorean at $15 million plus other valuable benefits in exchange for two payments totalling $9.36 million to be made by Logan, a company which DeLorean had not even owned. (R.294 at 70, 82-83, 98, 102-103; R.288 at 102-115). In fact, the settlement was so good that the DMC creditors committee filed objections thereto (R.294 at 108, 112-113), and their counsel, Malcolm Schade ("Schade"), called the settlement the best leveraged buyout he ever saw. (R.300 at 31).

Morganroth had performed substantial legal services on behalf of DeLorean and Logan from late 1982 through the 1987 settlement, however, Morganroth still had not received one cent in payment of fees or for expenses advanced. (R.256 at 98-99, 112-113; R.277 at 40; R.288 at 91, 105). By the time of the 1987 settlement with the Trustee, legal fees and expenses owed to Morganroth by DeLorean totalled $4 million, and owed by Logan totalled in excess of $1 million. (R.277 at 24). When DeLorean's and Logan's assets were released from the restraints in 1987, DeLorean and Logan collectively paid Morganroth $450,000 on account. (*Id.* at 24-26). DeLorean also began attempting to sell assets so that he could clear up his debts including the outstanding fees owed to Morganroth. (App. at 56a-62a).

Although the 1987 settlement with the Trustee resolved a multitude of claims, a lot of other cases were still pending against

DeLorean and Logan which Morganroth continued to work on, and a lot of cases were coming down the pike. (R.294 at 102-104, 128-130; R.287 at 179-181; R.288 at 45-46). In addition, Morganroth became general corporate counsel for Logan, worked on many commercial transactions for both DeLorean and Logan, and represented Logan in several cases. (R.294 at 76, 131-134).

On January 24, 1989, DSQ filed an action in New York against DeLorean seeking to enforce a $53 million default judgment rendered in London. (R.295 at 32-37). When the action was filed, ex parte restraining orders were entered by the court over DeLorean's and Logan's assets. (*Id.*). The restraints interfered with Logan's ability to make the final payment of the 1987 settlement which was due within one week, but Morganroth successfully petitioned for an extension on one occasion. (*Id.* at 81-85).

Summary judgment in favor of DSQ was eventually granted, but enforcement was stayed. (*Id.* at 85-91). DeLorean then finally relented to Morganroth's repeated urging to hire United Kingdom counsel which DeLorean had previously rejected on the grounds that he did not think he could get justice there. (*Id.* at 23, 29-30, 46-47, 77-78; R.300 at 188-194, 198-199; R.301 at 42-46). Morganroth paid all expenses to fly to the United Kingdom to assist in a motion to set aside the default judgment, which was granted, but the ruling was stayed for appeal. (R.295 at 103-117, 139; R.290 at 135-140).

By mid-October 1990, DeLorean and Logan had reached a settlement of the DSQ case, and as of that time, Morganroth had received sporadic payments from DeLorean and Logan totalling $800,000 on account. (R.271 at 36-37). Morganroth believed that he would be paid the outstanding balance based upon DeLorean's repeated acknowledgement of amounts due and repeated promises to pay during regular oral discussions regarding fees and during DeLorean's review of detailed time sheets and periodic invoices. (R.278 at 118, 131; R.296 at 45-46, 160-162; R.301 at 172-184; R.303 at 69-74).

When the 1990 settlement was consummated, the restraining orders over the assets were vacated and DeLorean resumed the process of attempting to sell his substantial assets which would produce more than sufficient cash to satisfy the outstanding fees owed to Morganroth. (R.277 at 48). Morganroth sent written composite bills to DeLorean and Logan with back up documentation because of the fact that the assets were going to be sold in order to pay all of the outstanding fees. (*Id.* at 49-50, 56-62). Prior to sending the composite billings, Morganroth discussed with DeLorean the fees owed and agreed to retroactively reduce his hourly rate because of the volume of work, amount of money owed over the eight year relationship, and the promise of immediate payment. (*Id.* at 51-52, 54; R.278 at 9, 17-18). After DeLorean received the 1990 billings for Logan and himself,[1] DeLorean confirmed that all fees would be paid upon the sale of any one of the assets. (R.277 at 64-65). In addition, Logan carried the fees owing to Morganroth on its audited financial statements. (*Id.*)

Morganroth continued to perform substantial legal services on behalf of DeLorean and Logan with respect to civil matters, commercial transactions, tax matters, corporate matters, sales of assets and properties, and a criminal warrant issued out of the United Kingdom. (*Id.* at 67, 69, 77-78, 87-90, 96-99). During such time period, Morganroth sent bills carrying forward the unpaid fees and expenses, DeLorean continued to acknowledge the amounts due and Logan continued to carry its debt on its audited financial statements. (R.292 at 147-150, 152-154, 173, 215-220; R.277 at 65-74, 76-77, 95-96). DeLorean also continued to represent that all of the amounts owed by DeLorean and Logan would be paid from the proceeds of sale of assets and properties. (R.277 at 69, 71, 74).

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1. Although the formula was correctly set forth in DeLorean's billing, the amount of $2,595,305 was inadvertently set forth in the billing as a result of a typographical error as opposed to $3,595,305, which was owed by DeLorean. (R.277 at 51-52, 91).

In August 1992, DeLorean sold his New York co-op for $11.5 million. (*Id.* at 74-75; R.288 at 113). When the sale was consummated, DeLorean advised Morganroth that the proceeds were being used to pay off the DSQ settlement and for a capital infusion in Logan so that the company would be stronger in order to facilitate an imminent sale of Logan's assets, and therefore, he would be paid all fees at the closing of the Logan sale. (R.277 at 75). Based upon DeLorean's representations, Morganroth continued to perform legal services for DeLorean and Logan. (*Id.* at 77-78, 86-90, 97-98, 103-106).

In December 1992, a closing for the Logan asset sale was scheduled, but DeLorean then advised Morganroth that the fees would be paid by the end of January 1993 because of tax considerations instead of at the closing. (*Id.* at 96, 99, 107). During a telephone discussion, DeLorean for the first time raised an objection to payment of an hourly fee for the *Cork Gully* case. (*Id.* at 100-102). Although Morganroth reminded DeLorean that DeLorean had agreed in May 1990 and then again in October and November 1990 that the fee for the *Cork Gully* case would be converted from contingent to hourly in connection with the agreement to dismiss the case as part of the consideration given in the DSQ settlement, Morganroth agreed to waive the $400,000 fee if all other fees were satisfied by the end of January. (*Id.*)

On January 5, 1993, the Logan asset sale was consummated and DeLorean received $5.75 million in cash with additional substantial installment payments to be paid to him. (*Id.* at 107, 111). Morganroth spoke with DeLorean regularly after the closing, and DeLorean told Morganroth not to worry about fees and that there also would be plenty of money derived from a deal that he structured through his New Jersey law firm for the sale of the Bedminster Estate which was scheduled to close during the first few days of February. (*Id.* at 107-110).

Instead of paying Morganroth as promised, DeLorean and Logan filed a sham malpractice lawsuit against Morganroth in New York on February 2, 1993. (*Id.* at 108-109). Nevertheless,

DeLorean continued to represent that all fees were going to be paid and even sought tax advice from Morganroth which was provided since Morganroth had not yet found out about the lawsuit. (*Id.* at 108-109, 113, 134). Soon after the New York malpractice action was served, the case was dismissed by the court on motion. (*Id.* at 109-110).

Morganroth later learned that attorney Edward Freidberg ("Freidberg") had secretly commenced working on the malpractice lawsuit to "handle" Morganroth as of October 15, 1990, and that Freidberg received approximately $1 million from DeLorean and Logan during a two-year time period when Morganroth was told no funds were available. (*Id.* at 112-125; App. at 70a-74a).

REASONS FOR DENYING THE WRIT

Pursuant to Rule 10 of the Rules of the Supreme Court of the United States, review on a petition for a writ of certiorari is not a matter of right, but of judicial discretion. Rule 10 further provides that a petition for a writ of certiorari will be granted only for compelling reasons.

No special or important reasons exist in this case warranting the granting of DeLorean's and Logan's Petition. The issues proposed for review do not involve a conflict among the circuits. To the contrary, the Petition actually challenges the sufficiency of the evidence regarding the jury verdict rendered in favor of Morganroth on the claims for fraud, breach of contract, and account stated. Apparently recognizing that Rule 10 makes clear that a petition for certiorari is disfavored when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law, DeLorean and Logan attempt to characterize their arguments as focusing upon the issue of standing to sue under the RICO statute. But any purported issues in this case regarding RICO were rendered moot when the jury found in favor of DeLorean and Logan on the RICO claim. Indeed, the Sixth Circuit properly concluded, from its review of universal rules of law governing the admission of evidence as applied to the record in

this case, that DeLorean's and Logan's request for a review of the District Court's denial of their pretrial motions to dismiss the RICO claim was unnecessary. In short, the Sixth Circuit affirmed the jury verdict on the grounds that: (1) DeLorean and Logan waived their right to object to the admission of evidence that they later alleged to be prejudicial after trial since they failed to so object during trial; (2) regardless of the presence of the RICO claim, the evidence challenged by DeLorean and Logan as inadmissible was relevant to support Morganroth's non-RICO claims and to rebut DeLorean's and Logan's affirmative defenses and recoupment defenses; and (3) the jury verdict rendered in favor of Morganroth was not the product of passion or prejudice from the RICO claim, but was supported by overwhelming and compelling evidence. In any event, the objective of DeLorean's and Logan's Petition is far too narrow and limited for this Court to grant the Petition. DeLorean's and Logan's Petition should be denied.

I. THE SIXTH CIRCUIT CORRECTLY DETERMINED THAT NO REASON EXISTS FOR REVIEWING THE DISTRICT COURT'S RULINGS DENYING THE PRETRIAL MOTIONS TO DISMISS THE RICO CLAIM BECAUSE THE SAME EVIDENCE WOULD HAVE BEEN ADMITTED REGARDLESS OF THE PRESENCE OF A RICO CLAIM.

Although the jury found in favor of DeLorean and Logan on the RICO claim, DeLorean and Logan contend that this Court should review the District Court's rulings on the pretrial RICO motions because the District Court's refusal to dismiss the RICO claim purportedly allowed Morganroth to present inflammatory evidence at trial regarding nine discreet categories of evidence. The Sixth Circuit, however, carefully analyzed each of the nine categories of challenged evidence and correctly determined that review of the District Court's rulings on DeLorean's and Logan's pretrial RICO motions was unnecessary since the so-called inflammatory evidence was presented with no contemporaneous objections and/or was relevant to the non-RICO claims and defenses. As shown below, the Sixth Circuit properly sustained

the District Court's evidentiary rulings regarding each of the categories of evidence challenged by DeLorean and Logan regardless of the presence of the RICO claim.

A. DeLorean's and Logan's Consistent Failure to Object to the Admission of Such Evidence Operated as a Waiver.

The record, as confirmed by the Sixth Circuit, reveals that DeLorean and Logan did not assert objections based on relevance, bad character evidence or prejudice to four of the categories of evidence challenged on appeal — (1) failure to pay other attorneys; (2) ties to organized crime;[2] (3) statement about Hillel Levin; and (4) relationship with Roy Nesseth.

The Sixth Circuit correctly found that the consistent failure to object to this evidence operated as a waiver by DeLorean and Logan of their claim regarding the admission of such evidence. Such a failure to object at the time of admission operates as a waiver pursuant to Fed. R. Evid. 103(a). *See United States v. LeBlanc*, 612 F.2d 1012, 1013-1015 (6th Cir. 1980).

B. The Challenged Evidence Was Admissible Pursuant to Rule 404(b) as to Morganroth's Claim For Fraud.

As the Sixth Circuit concluded, even if DeLorean's and Logan's consistent failure to object had not operated as a waiver, the admission of evidence that DeLorean and Logan consistently used the same devices to avoid paying other attorneys during the same time period that they attempted to avoid paying Morganroth was relevant to prove the element of intent to defraud in Morganroth's fraud claim pursuant to Fed. R. Evid. 404(b). Because it is difficult

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2. The record reveals, and the Sixth Circuit found, that DeLorean not only failed to object to the admission of the exhibits regarding this category, except for one exhibit, but he, in fact, introduced 11 exhibits regarding this very subject matter. The one objection that DeLorean did make was only on the grounds of lack of foundation, but, after objection, a witness provided further testimony that established the foundation.

to prove intent, knowledge or plan by direct evidence, such elements normally must be inferred from circumstantial evidence. *See United States v. Anendondo-Morales*, 624 F.2d 681, 684 (5th Cir. 1980); *see also United States v. Ellzey*, 874 F.2d 324, 329 (6th Cir. 1989); *United States v. Ausmus*, 774 F.2d 722, 727-728 (6th Cir. 1985). Accordingly, Rule 404(b) provides that evidence of "other acts" is admissible for proof of specific intent elements.[3] (*Id.*). Consequently, whether or not the District Court had ruled differently on DeLorean's and Logan's pretrial RICO motions, the Sixth Circuit correctly found that the evidence regarding non-payment of attorneys was relevant to Morganroth's common law fraud claim and the probative value for establishing fraudulent intent far outweighed any minor prejudicial effect.

The same holds true for DeLorean's failure to reimburse attorney Robin Bailey for funds advanced based upon DeLorean's false promise of immediate repayment. The District Court confirmed that the testimony regarding Bailey was admissible pursuant to Rule 404(b) regardless of the presence of a RICO claim as it was probative of DeLorean's and Logan's "motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident" with respect to Morganroth's common law fraud claim. (R.307 at 11-13). With respect to Bailey as well as other attorneys, including Morganroth, DeLorean made false promises of payment of money to an attorney without any present intention of performance in order to deceive and mislead the attorney.

The Sixth Circuit found that this testimony was not sufficiently prejudicial to warrant reversal in any event. Reversal based on improper admission of evidence is appropriate only when the admission interfered with substantial justice. *TCP Indus., Inc. v.*

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3. Indeed, a trial court is accorded broad discretion in determining the admissibility of such evidence under Rule 404(b), which determination can only be disrupted upon a showing of an abuse of discretion. *United States v. Ausmus*, 774 F.2d at 728; *United States v. Blankenship*, 775 F.2d 735, 739 (6th Cir. 1985).

Uniroyal, Inc., 661 F.2d 542, 550 (6th Cir. 1981); Fed. R. Civ. P. 61 ("No error in . . . the admission . . . of evidence . . . is ground for setting aside a verdict or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties."); Fed. R. Evid. 103(a) ("Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected. . . ."). As the Sixth Circuit found, in light of the compelling evidence supporting Morganroth's case, admission of this evidence was harmless and would not warrant reversal. *See City of Cleveland v. Peter Kiewit Sons Co.*, 624 F.2d 749, 756 (6th Cir. 1980).

C. The Challenged Evidence Was Admissible to Rebut DeLorean's and Logan's Affirmative Defenses and Recoupment Defenses.

The Sixth Circuit properly found that the District Court's admission of the balance of the challenged categories of evidence — (1) forging of signatures and documents; (2) ties to organized crime; (3) purported cancellation of Logan pension plan; (4) money laundering;[4] (5) relationship with Roy Nesseth; and (6) appropriation of Logan profits — was correct on the grounds that this evidence illustrated the difficulty and complexity of Morganroth's representation of DeLorean and refuted DeLorean's claim that Morganroth negligently failed to make diligent inquiry into factual matters related to Morganroth's representation.

At trial, DeLorean and Logan brought this evidence into issue through the assertion of affirmative defenses and recoupment

4. This category related to Morganroth's opening statement where he described allegations regarding actions by DeLorean that formed the basis for a later claim in bankruptcy proceedings in which Morganroth represented DeLorean. As the Sixth Circuit noted, the District Court issued a cautionary instruction to the jury that Morganroth's statements were not evidence and that they would have to decide the case on evidence actually admitted during trial.

defenses alleging that Morganroth performed minimal legal services on their behalf (R.287 at 126-128) and that the positions advanced on their behalf in the underlying matters of representation were insupportable and made without investigation. (*Id.* at 150).

In order to rebut the contention that Morganroth performed minimal legal services, Morganroth offered evidence of the nature and complexity of the legal issues and allegations that were publicly made throughout Morganroth's representation such as those that Kimmerly worked on as co-counsel with Morganroth on behalf of DeLorean and Logan for which they still owe Kimmerly $3 million, those that Weitzman defended against in the California and Detroit criminal trials on behalf of DeLorean with the assistance of Morganroth, and those that were involved in the civil actions Morganroth took over from Weitzman.

In order to rebut the contention that certain positions advanced were insupportable and made without any investigation, Morganroth offered evidence that he, as well as other attorneys, were misled by information and documents supplied by DeLorean that later were discovered to contain misrepresentations and revisions of history after the attorney-client relationship had been terminated. (R.307 at 12). For this purpose, Morganroth offered testimony of Kimmerly and Weitzman regarding "factual" information that Morganroth, Weitzman, and Kimmerly received from DeLorean in contrast to the true facts that later surfaced, testimony of Thomopoulos[5] regarding DeLorean's forgery of the GPD documents and alteration of a prenuptial agreement in contrast to the "factual" information that DeLorean provided to Morganroth and other co-counsel for the purpose of defending DeLorean in various matters, and testimony of officers of Logan that DeLorean claimed in 1993 to have legitimately canceled the Logan pension plan in 1988 in contrast to DeLorean's statements to Morganroth as to the existence of the pension plan in 1992 and instructions on how to deal with it in connection with the Logan assets sale, among

5. Although DeLorean and Logan contend that Morganroth supposedly characterized Thomopoulos as "incredible" during the divorce, no such characterization was made by Morganroth.

other evidence uncovered after the termination of the attorney-client relationship.

As the Sixth Circuit and the District Court concluded, the evidence regarding these six categories was properly admitted because such evidence: (1) described the nature and details of lawsuits in which Morganroth defended on behalf of DeLorean thereby demonstrating and bolstering the amount and complexity of the work; (2) demonstrated DeLorean's failure to disclose crucial information to Morganroth which substantially increased the amount of work Morganroth was required to perform; (3) served as proof of the amount billed to DeLorean; and (4) supported Morganroth's assertion that DeLorean impeded investigation by, among other things, forging documents and misleading his attorneys.

II. THE SIXTH CIRCUIT ALSO CORRECTLY CONCLUDED THAT NO REASON EXISTS FOR REVIEWING THE DISTRICT COURT'S RULINGS DENYING THE PRETRIAL MOTIONS TO DISMISS THE RICO CLAIM BECAUSE OVERWHELMING EVIDENCE SUPPORTED THE JURY VERDICT ON THE CLAIMS OF FRAUD, BREACH OF CONTRACT, AND ACCOUNT STATED.

The Sixth Circuit not only correctly found that the challenged evidence would have been admitted regardless of the presence of the RICO claim, but it also properly sustained the District Court's finding that the jury verdict was supported by overwhelming and compelling evidence in any event.

The record does not support DeLorean's and Logan's bald contention of a biased and prejudiced jury. DeLorean's and Logan's position on appeal merely mimicked their contention set forth in their motion for a new trial, but the District Court, who had the opportunity to observe the witnesses as well as the demeanor and attentiveness of the jurors, rejected the position. (R.222). The absence of any prejudice or bias was evidenced by the jury's

demeanor, attentiveness, and attitude observed by all during the course of the trial as well as the precise and analytical questions raised by the jury during deliberations. (App. at 81a-83a; R.266 at 2-5). Had the jury been biased, *then they would not have found in favor of DeLorean and Logan on the RICO claim.*

Indeed, the Sixth Circuit and the District Court concluded that Morganroth's fraud, breach of contract, and account stated claims were supported by substantial and overwhelming evidence adduced at trial. The testimony of at least 13 witnesses, including DeLorean and officers of Logan, and the introduction of hundreds of trial exhibits as well as stipulations of fact agreed to by the parties overwhelmingly supported Morganroth's claims of fraud, breach of contract, and account stated. In contrast, DeLorean and Logan did not present even a single fact witness to dispute the testimony and evidence presented by Morganroth.

A. Overwhelming Evidence Supported the Jury's Verdict on Morganroth's Breach of Contract Claim.

On appeal, DeLorean and Logan suggested that Morganroth presented insufficient evidence to demonstrate: (1) the existence of an express contract;[6] and (2) the amount of hours performed by Morganroth in connection with the contract. As determined by the Sixth Circuit, Morganroth presented overwhelming evidence to the jury that was clearly sufficient to warrant its findings on both of the foregoing issues.

DeLorean and Logan reiterate in their Petition that Morganroth could not have worked enough hours to justify the jury verdict. They make much of the fact that Morganroth threw out his time sheets during the course of the ten year representation. But, as the

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6. In the Petition, DeLorean and Logan finally unequivocally concede that an express contract existed as pled and proved by Morganroth at trial. Even though DeLorean and Logan stipulated and admitted to the existence of a binding express contract with Morganroth at trial (R.276 at 4-5; R.272 at 93-94), they took the contrary position on appeal.

Sixth Circuit concluded, the testimony reveals that Morganroth along with Jeffrey B. Morganroth ("JBM") prepared detailed time sheets which indicated services performed, date of performance, amount of hours, and a running balance owing for all cases, including *Cork Gully*, throughout the entire representation. (R.278 at 118; R.296 at 45-46, 160-162; R.301 at 175-176; R.303 at 69-74). The testimony further reveals that Morganroth regularly provided the time sheets to DeLorean at his office for review, and only threw out the time sheets after approval by DeLorean in an effort to prevent DeLorean's adversaries from having any possibility of discovering the litigation strategies and thought processes. (R.301 at 172-184; R.302 at 139-140; 203-238). This procedure regarding review and approval of time sheets was confirmed by Walter Keating as well, a client of Morganroth's who was referred by DeLorean in 1991 on DeLorean's advice that Morganroth had the "best legal mind in the United States" and Morganroth had been "the basis of solving all of [DeLorean's] personal problems and [DeLorean's] business asset problems." (App. at 47a-56a). George Bushnell, President of the American Bar Association and a member of the Michigan Disciplinary Board, testified that there was nothing wrong with throwing out time sheets, and that actually providing the time sheets to a client at the lawyer's office for review would be above and beyond the standard of care. (R.258 at 11, 18-25). The testimony further demonstrates that Morganroth not only provided DeLorean with the time sheets for review and approval, but that Morganroth regularly discussed the amount of outstanding fees with DeLorean, and that DeLorean on each occasion acknowledged the amounts due and promised that the fees owed by Logan and him would be paid in full. (R.296 at 45-46, 123, 160-162; R.301 at 165-172; R.303 at 95-98).

DeLorean and Logan could not present a single fact witness at trial to contradict the explicit testimony regarding DeLorean's review and approval of detailed time sheets as well as his constant acknowledgement of the amount of fees owed during the entire representation. Nor could DeLorean and Logan present a single fact witness at trial to contradict explicit testimony by Morganroth on how he worked 80 to 100 hours per week, devoting a high

percentage of his time to DeLorean/Logan matters during a ten year period. (R.277 at 6-13). The testimony of every fact witness completely supported Morganroth's testimony regarding the long hours he devoted to the representation of DeLorean and Logan, including, but not limited to: (1) testimony by Kimmerly who acted as DeLorean's attorney and closest confidant for 20 years (R.287 at 158, 162-165; R.288 at 17; R.290 at 13, 16; R.250 at 65-71; R.289 at 115); (2) testimony by Schade, an attorney who represented adversaries of DeLorean and Logan in approximately 12 of the matters handled by Morganroth (R.300 at 29-30); (3) testimony by JBM who personally observed Morganroth's long work hours devoted to DeLorean/Logan matters when he served as a law clerk during the summers and as Morganroth's partner after he passed the bar in the fall of 1988 and who took over the day-to-day responsibilities of virtually all of the firm's non-related matters (R.301 at 119-124, 126, 142-161, 222-225; R.270 at 134-154); (4) testimony by DeLorean himself (R.272 at 86-87); (5) testimony by Steven Fellows, an attorney who shared office space with Morganroth until 1991 and was called as a witness by the defense (R.272 at 115-116; App. at 76a-78a); and (6) testimony by Maria Reed, who worked as Morganroth's secretary and was called as a witness by the defense (App. at 78a-80a). Even the Honorable George E. Woods, presiding judge over the massive multi-district litigation, noticed the long hours devoted by Morganroth on behalf of DeLorean and Logan:

> Well, Mr. Morganroth, I would be the last person in the world to depreciate your efforts on behalf of your client. I can't say that I have ever seen anybody who's been more assiduous in their attention or who has worked harder on their client's behalf than you. As you say, you have burned the candle at both ends running back here and there and doing every single thing that you can. He is fortunate to have you.

* * *

> I am not going to engage in further repartee on this. I meant it earlier when I said I thought you had done a great deal of running for and on behalf of your client. I did it to be very frank with you, because I have seen you absolutely draining yourself right out of the end of the faucet on this thing, doing everything that you can on behalf of your client and I commend you for that. (R.295 at 83-85).

In addition, further evidence supported the amount of the jury verdict,[7] including, without limitation:

• DeLorean admitted personally owing fees to Morganroth in the amount of $2.2 million near the end of 1990 and $2.5 million in 1991 as attested to in a loan commitment prepared and signed by DeLorean (R.277 at 41-46), a letter to the American Arbitration Association prepared and signed by DeLorean (*Id.* at 46-47; R.272 at 93-94; App. at 96a), and several personal financial statements of DeLorean (App. at 13a-22a, 43a, 99a);

• Periodic bills carrying forward the unpaid amounts and itemizing legal services performed by Morganroth on DeLorean's behalf were sent, the last of which was dated December 17, 1992, which reflected an unpaid balance owed personally by DeLorean in the amount of $3,927,905[8] (R.277 at 50, 86-90, 96-99, 108-109, 113, 134);

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7. The verdict is entitled to considerable deference. *Adkins v. GAF Corp.*, 923 F.2d 1225, 1232 (6th Cir. 1991). Unless the Appellate Court is "certain indeed that the award was contrary to all reason," then the award must be sustained. *Cathey v. John Manville Sales Corp.*, 776 F.2d 1565, 1572 (6th Cir. 1985).

8. DeLorean misrepresents in the Petition that Morganroth could not substantiate the expenses charged in the billings and that Morganroth erroneously overcharged DeLorean by including $11,000 in sanctions, among other things. DeLorean's contention not only is false, but the record reveals that DeLorean and Logan

(Cont'd)

• Logan admitted that it owed fees to Morganroth in the amount of $1,408,648.26 in its certified financial statements dated 1991-1993, and officers of Logan acknowledged that DeLorean swore under oath to such debt on an annual basis (R.292 at 150, 153, 173, 217-220, 224-225; R.272 at 93-94).

B. Overwhelming Evidence Supports the Jury Verdict on Morganroth's Fraud Claim.

DeLorean and Logan have not challenged on appeal any aspect of Morganroth's pleading or proof regarding the fraud claim, except they contend that the evidence somehow was insufficient to establish that Morganroth reasonably relied upon the fraudulent misrepresentations made to him which induced him to perform the extensive legal services. At trial, Morganroth presented overwhelming evidence that he performed legal services and incurred expenses for and on behalf of DeLorean and Logan which continued in reliance upon repeated representations, acknowledgments, assurances, and sworn statements made by DeLorean and Logan over a ten year time period.

DeLorean and Logan, however, have suggested that Morganroth could not reasonably rely upon such representations because he served as DeLorean's attorney in fee disputes with attorneys William Garratt ("Garratt") and William Simon ("Simon"), other attorneys such as Kimmerly and Weitzman had not been paid, and allegations of fraud were leveled against DeLorean in litigation by others. DeLorean's and Logan's position not only was rejected by the jury after hearing all the evidence, but the District Court and the Sixth Circuit correctly rejected the position as well.

DeLorean's and Logan's contention that the evidence does not support Morganroth's reasonable reliance upon the fraudulent

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(Cont'd)
were in fact undercharged as: (1) Morganroth did not charge for some of the services performed; and (2) Morganroth retroactively reduced his hourly rate based upon volume of work and promise of immediate payment.

misrepresentations made to him over a ten year period utterly misses the mark because they stipulated to such reliance. DeLorean and Logan stipulated that:

> (i) DeLorean and Logan *at all times* were aware that Morganroth and his firm *intended* to be compensated for services rendered to DeLorean and Logan;
>
> (ii) DeLorean and Logan *at all times* were aware that Morganroth and his firm *intended* to be reimbursed for expenses they incurred on DeLorean's and Logan's behalf; and
>
> (iii) When Morganroth and his firm rendered legal services to DeLorean and Logan and paid expenses on their behalf, *Morganroth and his firm did so with the expectation of being compensated.*

(App. at 92a). In fact, DeLorean even admitted that Morganroth kept working because Morganroth "figured I was going to pay" (App. at 66a-68a), and that his statements to Morganroth may have led Morganroth to believe full payment was forthcoming. (App. at 64a, 68a-73a; R.272 at 48-49).

Such admissions as well as Morganroth's testimony as to his reliance (R.270 at 115) were further corroborated by DeLorean's conduct of praising Morganroth's performance, referring clients to Morganroth, and making what appeared to be good faith payments on account throughout the entire representation. (R.294 at 120-123; R.295 at 205; R.271 at 135; R.289 at 16; App. at 47a-51a; R.264 at 237-240). Indeed, the record is replete with evidence that Morganroth provided services and incurred expenses on behalf of DeLorean and Logan in reliance upon the false representations, acknowledgments, assurances, and sworn statements. Notwithstanding these repeated representations, acknowledgments, and assurances, Morganroth learned during discovery in the instant action that at the time DeLorean and Logan made such

representations: (1) DeLorean had been receiving and had access to large sums of cash although he had continuously claimed to lack access to any funds (App. C; R.292 at 95-98); and (2) DeLorean and Logan had secretly retained attorney Freidberg to bring a sham malpractice case against Morganroth in order to "handle" him and avoid paying the large balance owed, while continuing to induce Morganroth to provide legal services on their behalf for a period of 2 1/2 years thereafter since they wanted Morganroth to continue to provide legal services but knew he would not do so if aware of their true intent.

Moreover, any awareness by Morganroth that other attorneys had not been paid by DeLorean has no bearing because Morganroth was led to believe by DeLorean that attorneys had not been paid as a result of bail requirements and restraining orders that left no liquid assets available — the same reason given to Morganroth for the outstanding fees owed to him. (R.256 at 38, 48-49; App. at 67a-68a). The same holds true for DeLorean's non-payment of Kimmerly — even Kimmerly himself believed he would be paid. (R.287 at 166-169). In addition, Weitzman's testimony confirms Morganroth's reliance upon the fraudulent misrepresentations as Weitzman testified that Morganroth, like Weitzman, believed that DeLorean would never stiff him. (R.289 at 158-159).

Reference to Morganroth's representation of DeLorean in fee disputes with Garratt and Simon further misses the mark. The Garratt fee dispute was arbitrated, and Garratt's request for $600,000 was reduced to $125,000 award by virtue of DeLorean's affirmative defenses.[9] (R.270 at 168). Meanwhile, Morganroth learned during discovery in the instant action that DeLorean's position in the Simon fee dispute was premised upon DeLorean's fabricated version of events. (R.106, Ex.29 at 266, 269-271, 443-444). DeLorean even contended that he had not paid Simon

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9. DeLorean incorrectly suggests that Morganroth's RICO claim alleges a scheme to defraud attorney Garratt. On the contrary, Morganroth did not allege that DeLorean or Logan engaged in any RICO scheme against attorney Garratt.

because he lacked access to funds, but discovery in the instant action proved otherwise. (R.281 at 137-148).

Finally, DeLorean's and Logan's contention that Morganroth should not have relied upon their repeated representations and acknowledgements over a ten year period because allegations of fraud had been leveled against DeLorean is devoid of merit as well. DeLorean's and Logan's position is ironic in light of their constant assurances to Morganroth during his representation that they had not engaged in the wrongdoing alleged. During the trial, however, Morganroth presented substantial evidence that he, as well as other attorneys, were misled by information and documents supplied by DeLorean that later were discovered to contain misrepresentations and revisions of history after the attorney-client relationship had been terminated. (R.307 at 12). Leave it to DeLorean to suggest that Morganroth could not rely upon the repeated representations of his client, but somehow should reasonably rely upon negative allegations made by the client's adversary during contentious litigation.

C. Overwhelming Evidence Supports the Jury Verdict on Morganroth's Account Stated Claim.

As the District Court and Sixth Circuit determined, Morganroth's account stated claim was supported by overwhelming evidence as well.

The testimony of Morganroth and JBM revealed that throughout the ten year representation, DeLorean regularly reviewed and approved time sheets which indicated the services performed on behalf of DeLorean and Logan, the date of performance, the amount of hours devoted, and a running balance of legal fees owed. (R.278 at 118; R.296 at 45-46; R.301 at 172-184; R.303 at 69-74). On each occasion, DeLorean agreed to the balance owing and promised full payment by both debtors. (*Id.*) In addition, the testimony of Morganroth and JBM also revealed that the outstanding balance for legal fees owed to Morganroth by DeLorean and Logan was regularly discussed with DeLorean, and

on each occasion DeLorean acknowledged the amount due and promised full payment. (*Id.*) The testimony further showed that after DeLorean and Logan received periodic billings, DeLorean acknowledged the amounts due and promised full payment through February 2, 1993. (R.277 at 65-78, 86-90, 96-99, 103, 106, 108-109, 113, 134).

III. EVEN IF IT WERE SOMEHOW NECESSARY TO REVIEW THE DISTRICT COURT'S DENIAL OF THE PRETRIAL RICO MOTIONS, THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN DENYING SUCH MOTIONS IN ANY EVENT.

A. The Supposed Deficiencies Regarding the RICO Claim Raised on Appeal to the Sixth Circuit Missed the Mark.

In their appeal to the Sixth Circuit, DeLorean and Logan argued that the District Court abused its discretion in denying their pretrial motions to dismiss the RICO claim because: (1) Morganroth failed to provide any legal or factual support other than to simply argue that the RICO claim was based on previous RICO claims upheld by other judges; and (2) the only act that could have injured Morganroth was DeLorean's non-payment of fees and expenses which would not constitute racketeering activity under RICO. Although both contentions were erroneous, DeLorean and Logan have reiterated them in the Petition.

1. Morganroth provided sufficient legal and factual support to withstand the pretrial motions to dismiss.

A review of the briefs and exhibits submitted by Morganroth to the District Court in opposition to the motions completely refutes DeLorean's and Logan's position that Morganroth simply argued that the RICO claim was based on previous RICO claims upheld by other judges. In opposition to the Rule 12(b)(6) motion, Morganroth submitted a brief devoting in excess of 23 pages to RICO and citing in excess of 37 cases and legal authorities. (App. K). In opposition to the summary judgment motion, Morganroth

submitted a 66-page brief, citing 75 cases and legal authorities and referring to 57 accompanying exhibits consisting of deposition testimony, affidavits, and documentary evidence.[10] (App. L; R.106). The District Court did not deny the motions on the basis of argument that prior judges upheld RICO claims against DeLorean and Logan, but by exercising its sound discretion after reviewing voluminous case law and legal authority cited, as well as the testimony of numerous witnesses, documentary evidence, and stipulations of fact made by the parties, under the applicable standards of review which were clearly set forth in Morganroth's briefs. (App. K-L).

Morganroth's briefs addressed each challenge to the RICO claim and demonstrated that: (1) the predicate acts alleged were related and amounted to or posed a threat of continued activities; (2) a RICO enterprise was well pled and supported by more than sufficient evidence to establish a genuine issue of material fact; (3) violations of 18 U.S.C. § 1962(a) were well pled and supported by more than sufficient evidence to establish a genuine issue of material fact; (4) violations of 18 U.S.C. § 1962(b) were well pled and supported by more than sufficient evidence to establish a genuine issue of material fact; (5) violations of 18 U.S.C. § 1962(c) were well pled and supported by more than sufficient evidence to establish a genuine issue of material fact; (6) violations of 18 U.S.C. § 1962(d) were well pled and supported by more than sufficient evidence to establish a genuine issue of material fact; and (7) injury to Morganroth's business or property by reason of violations of 18 U.S.C. § 1962 was well pled and supported by more than sufficient evidence.

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10. DeLorean and Logan also filed a pretrial motion for a separate trial of the RICO claim, and a Rule 50(a) motion for directed verdict as to the RICO claim and quasi contract claims only. In opposition to these motions regarding the RICO claim, Morganroth filed lengthy briefs citing numerous cases and legal authorities and referring to substantial testimony, exhibits, and stipulations of fact made by the parties. (App. M-N).

2. Requisite racketeering activity was well pled and supported by sufficient evidence to withstand motions to dismiss and/or summary judgment.

The one line devoted to this contention in DeLorean's and Logan's appeal to the Sixth Circuit appeared to be premised upon the assertion that non-payment of money cannot constitute racketeering activity. DeLorean reiterates this same assertion in the Petition.

The RICO statute defines racketeering activity as the commission of any act delineated in 18 U.S.C. § 1961(1). As pointed out in Morganroth's appellate brief to the Sixth Circuit, the RICO claim was not based upon the non-payment of money, but rather, the commission of five different types of predicate racketeering acts set forth in 18 U.S.C. § 1961(1): (1) violation of 18 U.S.C. § 1341; (2) violation of 18 U.S.C. § 1343; (3) violation of 18 U.S.C. § 1952; (4) violation of 18 U.S.C. § 1956; and (5) violation of 18 U.S.C. § 1957. (R.1 at 26-33).

The Sixth Circuit has ruled that the commission of at least two predicate acts occurring within ten years of each other in furtherance of even a single fraudulent scheme is sufficient to satisfy the pattern of racketeering activity element. *Newmyer v. Phitaletic Leasing, Ltd.*, 888 F.2d 385, 396-397 (6th Cir. 1989). *Accord, Dana Corp. v. Blue Cross Blue Shield Mut.*, 900 F.2d 882, 886-887 (6th Cir. 1990). Morganroth not only alleged the commission of such racketeering acts with respect to the Morganroth Scheme, but more than sufficient evidence was adduced during discovery and at trial to withstand a challenge to the factual sufficiency of the "racketeering activity" allegation based upon the Morganroth Scheme alone. (App. at 139a-141a, 223a-229a; R.106; R.1).

Nevertheless, DeLorean and Logan attempt to cloud the issues by arguing that Morganroth lacked standing to bring the RICO claim because he alleged the commission of multiple schemes that purportedly were unrelated and did not cause injury to Morganroth. DeLorean's and Logan's position founders on two separate grounds.

First, Morganroth did not allege the commission of the multiple schemes for the purpose of seeking damages therefor as DeLorean and Logan disingenuously suggest,[11] but such schemes were alleged for the purpose of delineating an ongoing association in fact enterprise having a common purpose, continuity of structure and personnel, and pattern of roles necessary to carry out the racketeering activity over an extended period of time.

Second, the multiple schemes alleged by Morganroth were interrelated; they were not haphazard events strung together by Morganroth as DeLorean and Logan incorrectly contend. Morganroth alleged that key participants in the development, manufacture, and distribution of the DeLorean sports car secretly came together to form a criminal network and used their positions and relationships to commit illicit activities for the purpose of illegally obtaining money and property. Ultimately, the car company failed because the criminal network illegally and fraudulently diverted funds to line its own pocket that were necessary for the operation of the car company. When the members of the criminal network could no longer forestall allegations of wrongdoing, they hired attorneys to defend their conduct. The attorneys thought they were defending the legitimate business operations of the failed car company based upon facts and documents provided to them. In reality, the criminal network attempted to further their overall scheme so that the members of the criminal network could defend against the allegations of wrongdoing while protecting and keeping their ill-gotten gains intact by fraudulently inducing the attorneys to perform legal services in reliance upon false promises of payment and false information. It is within this context that Morganroth alleges that the multiple schemes were committed by the criminal network. Morganroth was one of the attorneys that the criminal network deceived along with Weitzman, Kimmerly, and others.

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11. Morganroth alleged that injury to his business and property was proximately caused solely by reason of the violations of the RICO statute that were directed against him in connection with the Morganroth Scheme only.

B. No Compelling Reasons Exist For Granting Review.

In a last ditch effort to create a reason for this Honorable Court to grant the Petition, DeLorean and Logan disingenuously contend that further guidance regarding an issue of RICO standing is needed. They contend that this case somehow involves a purported conflict in the circuits regarding the application of the RICO standing rules enunciated in *Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258 (1992) because some circuits have distinguished between corporate shareholders and corporate creditors.

DeLorean's and Logan's position utterly misses the mark because this case in no way involved any purported issue regarding the application of the RICO standing rules enunciated in *Holmes* to different classes of plaintiffs nor was any such issue even raised by DeLorean and Logan with the District Court or the Sixth Circuit. Indeed, the Sixth Circuit could not have reached this issue even if the issue had been raised at the District Court level because it determined that review of the District Court's rulings regarding the RICO claim was unnecessary. Consequently, the Sixth Circuit's decision in this case did not and could not have conflicted with any decision of another Circuit Court or state court of last resort regarding the application of *Holmes*.

Moreover, DeLorean's and Logan's assertion that Morganroth should not have been entitled to pursue a RICO claim because he once represented DeLorean and Logan and purportedly was in pari delicto with them equally misses the mark as well. DeLorean and Logan are unable to cite any portion of the RICO statute or any law that prohibits a lawyer from pursuing a RICO claim against another for violations of the RICO statute that were perpetrated directly against the lawyer. Likewise, DeLorean and Logan are unable to cite any statute or law that prohibits a lawyer from pursuing claims against his former client merely because the lawyer once represented the client. In this case, DeLorean and Logan not only committed wrongs directly against Morganroth, but they filed malpractice claims and counterclaims against Morganroth and

asserted affirmative defenses and recoupment defenses that challenged virtually every aspect of Morganroth's representation. As the jury determined after hearing all of the evidence, Morganroth was not in pari delicto with DeLorean — Morganroth was a victim of fraud perpetrated by DeLorean and Logan directly against him. Indeed, the record reveals that Morganroth not only discovered after the termination of his representation that DeLorean and Logan had defrauded him out of substantial legal fees and expenses, but that DeLorean's assurances that he had not engaged in any wrongdoing were based upon misrepresentations, revisions of history, and perhaps fabricated documents.

CONCLUSION

For all of the foregoing reasons, Respondent, Morganroth, respectfully requests this Honorable Court to deny the Petition.

Respectfully submitted,

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APPENDIX

APPENDIX A — TRANSCRIPT OF JURY VERDICT DATED JANUARY 4, 1995

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 93 CV 70848 DT

Detroit, Michigan
Wednesday, January 4, 1995

MORGANROTH & MORGANROTH, a Michigan general partnership, and MAYER MORGANROTH,

Plaintiffs,

-vs-

JOHN Z. DELOREAN and ECCLESIASTES 9:10-11-12, INC., a Delaware corporation (formerly known as Logan Manufacturing), a Delaware corporation, jointly and severally,

Defendants.

JURY VERDICT

TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE ANNA DIGGS TAYLOR
UNITED STATES DISTRICT COURT JUDGE, and a jury.

* * *

Appendix A

[2] Detroit, Michigan

Wednesday, January 4, 1995

10:35 a.m.

THE COURT: We received a note that says, "We have reached a verdict, the jury."

Are the parties prepared to receive the verdict?

MR. FLESHMAN: Yes, Your Honor.

MR. MORGANROTH: Yes, Your Honor.

MS. NADLER: Yes, Your Honor.

THE COURT: All right. Bring in the jury.

(Jury enters the courtroom at 10:35 a.m.)

THE COURT: Court is in session. Be seated.

The Court is in receipt of a note that says, "We have reached a verdict," signed "The jury."

Will the foreman please rise.

Do you have a unanimous verdict on all the issues before you?

JUROR GACH: Yes, we do.

Appendix A

THE COURT: All right. Give it to the clerk, please. (Juror gives verdict form to clerk.)

THE COURT: You can sit down. I'm going to have him read it to us.

All right. Please read the verdict.

CLERK FRANKEL: The verdict form reads:

[3] We, the jury, answer the questions submitted as follows:

"*Plaintiffs' RICO Claims.*

"1. Do you find that any Defendant violated RICO Section 1962(a)?

"A. Defendant, John Z. DeLorean. Answer: No.

"B. Defendant, Ecclesiastes (formerly known as Logan Manufacturing Company). Answer: No.

"2. Do you find that any Defendant violated RICO, Section 1962(b)?

"A. Defendant, John DeLorean. Answer: No.

"B. Defendant, Ecclesiastes. Answer: No.

"3. Do you find that any Defendant violated RICO Section 1962(c)?

Appendix A

"A. Defendant, John DeLorean. Answer: No.

"B. Defendant, Ecclesiastes. Answer: No.

"4. Do you find that any Defendant violated RICO Section 1962(d)?

"A. Defendant, John DeLorean. Answer: No.

"B. Defendant, Ecclesiastes. Answer: No.

"*Plaintiffs' Fraud Claims.*

"5. Do you find that any Defendant committed fraud or intentional misrepresentation?"

As to "John DeLorean. Answer: Yes."

As to "Ecclesiastes. Answer: Yes."

[4] "*Plaintiffs' Breach of Express Contract.*

"6. Do you find that any Defendant breached an express contract with Plaintiffs?"

As to "Jonn DeLorean. Answer: Yes."

As to "Ecclesiastes. Answer: Yes."

"*Plaintiffs' Breach of Implied Contract Claims.*

"7. Do you find that any Defendant breached an implied contract with Plaintiffs?"

This is left blank.

MS. NADLER: That's correct.

THE COURT: That's right.

CLERK FRANKEL: *"Plaintiffs' Account Stated Claims.*

"8. Do you find that any Defendant is liable to Plaintiffs by virtue of an account stated?"

As to "Defendant John DeLorean. Answer: Yes."

As to "Defendant Ecclesiastes. Answer: Yes."

"*Plaintiffs' Quantum Meruit Claims*

"9. Do you find that any Defendant is liable to Plaintiffs by virtue of a quantum meruit?"

As to John DeLorean, this is left blank.

And as to Ecclesiastes, this is left blank.

"*Plaintiffs' Unjust Enrichment Claim.*

"10. Do you find that any Defendant is liable to Plaintiffs because they were unjustly enriched?"

As to John Z. DeLorean, this is left blank.

[5] And as to Defendant Ecclesiastes, this is also left blank.

"11. What is the grand total of fees and expenses, if any, to which you find (without any deductions) that Plaintiffs are entitled?

Appendix A

"A. To Plaintiffs against Defendant, John Z. DeLorean." The answer is "$3,427,905.00."

"B. To Plaintiffs against Defendant, Ecclesiastes." Answer: "$1,311,989.00."

"C. Do you find that Defendant, John Z. DeLorean, is also responsible to Plaintiffs for the amount you awarded against Ecclesiastes in subpart B above?" Answer to C is "Yes."

"12. From that amount, what amount, if any, do you find should be deducted because of Defendants' defenses?

"Answer: Zero dollars and zero cents.

"13. What is the total amount that you award Plaintiff for loss of business and income up to present time other than specified in your answer to Question 11?"

Answer for part A: "To Plaintiffs against Defendant, John Z. DeLorean, $600,000.00."

And then part B: "To Plaintiffs against, Defendant Ecclesiastes, Zero dollars and zero cents.

"14. If you find that Plaintiffs will sustain loss of business and income in the future, give the total amount of [6] damages that you award Plaintiffs for each of the following years in which Plaintiffs will sustain damages."

Answer:

Part A: "To Plaintiffs against Defendant, John Z. DeLorean:"

1995, the answer is zero.

1996, the answer is zero.

1997, the answer is zero.

1998, the answer is zero.

1999, the answer is zero.

2000, the answer is zero.

2001, the answer is zero.

2002, the answer is zero.

And 2003, the answer is zero.

Part B: "To Plaintiffs against Defendant, Ecclesiastes:"

1995, zero.

1996, zero.

1997, zero.

1998 is zero.

1999 is zero.

2000 is zero.

2001 is zero.

2002 is zero.

And 2003 is also zero.

[7] "15. What is the total amount that you award to Plaintiffs for punitive damages?

"A. To Plaintiffs against Defendant, John Z. DeLorean." The answer is "$5 million."

"B. To Plaintiffs against Defendant, Ecclesiastes." The answer is "zero."

And the verdict form is signed by the foreperson.

THE COURT: Please poll the jury. Is there a request for a poll?

MR. FLESHMAN: Yes, there is, Your Honor.

THE COURT: Please poll the jury.

CLERK FRANKEL: Cynthia Ann Johnson, was that and is that still your verdict, as stated in the record?

JUROR JOHNSON: Yes.

CLERK FRANKEL: Danny Raye Hawes, was that and is that still your verdict, as stated in the record?

JUROR HAWKS: Yes.

CLERK FRANKEL: Denise Michelle O'Rourke, was that and is that still your verdict, as stated in the record?

JUROR O'ROURKE: Yes.

CLERK FRANKEL: Janet Carol Driscoll, was that and is that still your verdict, as stated in the record?

JUROR DRISCOLL: Yes.

CLERK FRANKEL: Susan Marie Perry-Nolte, was that and is that still your verdict, as stated in the record?

[8] JUROR PERRY-NOLTE: Yes.

CLERK FRANKEL: Mariette L. Maleszyk, was that and is that still your verdict, as stated in the record?

JUROR MALESZYK: Yes.

CLERK FRANKEL: Linda Pearl Flowers, was that and is that still your verdict, as stated in the record?

JUROR FLOWERS: Yes.

CLERK FRANKEL: And Steven J. Gach, was that and is that still your verdict, as stated in the record?

JUROR GACH: Yes.

THE COURT: Thank you very, very much. You all worked

very hard and paid close attention to all the evidence and the instructions. Thank you very much.

At this time, you are discharged and dismissed.

Step into your room before you leave in case something is on somebody's mind. But you are discharged and dismissed, and tell Jeanne Burgess downstairs.

JURORS: Thank you.

THE COURT: Thank you so much.

(Jury leaves the courtroom at 10:42 a.m.)

THE COURT: Does anyone have anything that must be resolved before we discharge the jury?

(Applause heard coming from the jury room.)

MR. MORGANROTH: I think they had something to say.

MR. FLESHMAN: Your Honor, may I inquire as to what [9] the local customs, practices or rules are about contact of the jury after they are discharged?

THE COURT: Oh, I think you are each free to talk with them.

Is that all?

MR. FLESHMAN: That's all.

Appendix A

THE COURT: All right. And you are free to look at the verdict form.

But maybe you should, you know, thank them or whatever before they leave, because I'm going and tell them they can go right now.

So let them see the verdict form before you send it downstairs. Staple it together and send it downstairs to file. (Proceedings adjourned at 10:45 a.m.)

STATE OF MICHIGAN

ss.

COUNTY OF WAYNE

I, Denise A. Mosby, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

s/ Denise A. Mosby
DENISE A. MOSBY, CSR-RPR
Official Court Reporter

Dated: January 12, 1995

APPENDIX B — TRANSCRIPT OF TRIAL PROCEEDINGS DATED SEPTEMBER 22, 1994

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Docket No.
93-CV-70848 DT

Detroit, MI
9-22-94
9:00 a.m.

MORGANROTH & MORGANROTH, a Michigan general partnership, and MAYER MORGANROTH,

Plaintiffs,

-vs-

JOHN Z. DE LOREAN and ECCLESIASTES 9:10-11-12, INC., a Delaware corporation, (formerly known as Logan Manufacturing), a Delaware corporation, jointly and severally,

Defendants.

TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE ANNA DIGGS TAYLOR
UNITED STATES DISTRICT JUDGE, and a jury

* * *

Appendix B

[116] Q. Your name, sir?

A. Frank Shaler.

Q. And, sir, are you the accountant for John DeLorean?

A. I've just prepared tax returns.

Q. So you do work for John DeLorean? You do tax returns for him?

A. Yes.

* * *

[118] * * *

Q. Now, sir, during the course of the years, did you prepare certain financial statements for John DeLorean?

A. Yes.

* * *

[121] Q. Okay. Let me take that from you for the time being. Let me show you Exhibit 155 and ask you whether or not the first page of that particular exhibit is a letter from you?

A. Yes, it is.

Q. And the second page, what is that?

A. It's a draft of a financial statement.

Q. Now, dated January 18th, 1993, did this come from your records, sir?

A. Looks like my writing on it, yeah.

MR. M. MORGANROTH: I would offer Exhibit 155 into evidence, Your Honor.

MR. FREIDBERG: No objection.

THE COURT: Received.

Q. (BY MR. MORGANROTH): Now, sir, it reads January 18th, 1993, do you see that, sir?

A. Yes.

Q. Says, "I have prepared your personal financial statement as of January 15, 1993 from the data you sent to me and it is enclosed." Addressed to Dear John, is that correct?

A. That's right. Correct.

Q. Now you see on the bottom it says, "Frank, [122] this sounds too much like a disclaimer. Would you mind rewording it something like this? Says the same thing but more softly. Dear J., In accordance with your instructions I prepared your personal financial statements as of January 15, 1993."

Who put that on this particular letter?

A. I believe Mr. DeLorean did.

Q. Did he tell you why he wanted you to change your sort of like disclaimer regarding his financial return? Pardon me, his financial statements.

A. No.

Q. On the next page there's a listing of assets.

A. Yes.

Q. And he shows bank accounts of a million five hundred thousand?

A. Yes.

Q. By the way, whose handwriting is this?

A. That's my handwriting.

Q. Where did you get the information from to put these things down?

[123] A. Might have been a telephone call or fax. I don't recall.

Q. Well, who would have told you? Who would have given you these facts?

A. Mr. DeLorean.

Q. Next item is, "notes receivable from the sale of Logan Manufacturing Company, two million eight hundred fifty thousand dollars." Who gave you that information?

A. I believe Mr. DeLorean.

Q. The next is "preferred stock from sale of Logan Manufacturing, four million five hundred thousand dollars," who gave you that fact?

A. Mr. DeLorean.

Q. Next is "real estate, land and buildings at Logan, Utah," with other explanations about it, "two million five hundred thousand dollars," who gave you that figure and that statement?

A. Mr. DeLorean.

* * *

[126] * * *

Q. What is Number 2 item? I can't quite read that. Can you read what you put down there?

A. "Can't balance rental properties paid in —"

I can't read the rest of it. Looks like "different amounts of rent."

Q. Tell me, sir, this Paragraph 5, says "legal fees payable." Now, were you asking a question of John DeLorean what legal fees he owed?

A. Yes.

Q. Why were you asking him that in 1993?

A. Well, I was trying to prepare a financial statement for him.

Q. In the past Mr. DeLorean carried on his financial statement owing appreciable amount of legal fees, didn't he?

A. I don't recall. If you showed me one, I could maybe.

Q. Okay. I won't put it in yet, but let me show you Exhibit 136 and ask if he shows — if that refreshes your memory he showed he owed two million five in legal fees in 1991?

A. It does.

Q. Didn't you ask him what happened to all the [127] legal fees, to all these legal fees, did you pay them? Didn't you ask him that?

A. No.

Q. Well, you asked him about the legal fees, didn't you? Weren't you asking him what happened to those legal fees?

A. I was asking whether he owed any at the present time.

Q. And he told you how much that he owed in legal fees in 1993 to any lawyer in the world?

A. From the notes there, apparently said zero.

Q. Um-hmm. Tell me, had you ever had any discussions — strike that.

Appendix B

You've had discussions with Mr. DeLorean that he owed Thomas Kimmerly a lot of money, didn't you?

A. I don't believe so.

Q. Never had discussions where Mr. DeLorean told you he owed Thomas Kimmerly legal fees?

A. No.

Q. Now, sir, let me show you the exhibit I just showed you which is 136 and ask you whether or not you prepared that financial statement for Mr. DeLorean?

[128] A. Well, there's really two statements here. There's a typed one.

Q. Um-hmm.

A. Which apparently was a copy of one I provided to him, and then I was changing it to try to prepare a later financial statement.

Q. Are you saying that there's one statement but writings over that statement?

A. Yes.

Q. Just one statement but then lined through, then amended somehow? Is that what you're saying, sir? You see where it says December 31, 1990 at the top?

A. Yes.

Q. And you see where it's changed to December 1991?

A. Yes.

Q. Now, sir —

MR. M. MORGANROTH: I'll offer Exhibit 136 into evidence, Your Honor.

MR. FREIDBERG: No objection.

THE COURT: Received.

* * *

[141] * * *

Q. Let me show you Exhibit 156 and ask you if that's a December 31, 1990 financial statement of John DeLorean?

A. Yes, it is.

Q. Did you prepare it?

A. Yes.

Q. Do you see where it says legal fees payable to $2,500,000?

A. Yes, um-hmm.

* * *

Appendix B

[142] * * *

Q. (BY MR. MORGANROTH): Now, was it the procedure that Mr. DeLorean would send to you the previous financial statement that [143] you had prepared for him and sent it back with notes on it changing the figures as he saw — understood it to be changed and sent it to you and then you typed out the new financial statement with the new figures in it?

A. No. That's not the way I recall, no.

Q. Well, how was it done then?

A. Well, he might send me a note saying that different — there's different amounts for different categories at this time. We might do it by telephone. Some cases he might have crossed out some figures on a prior statement and put in new figures.

Q. Either way, those figures came from him, is that correct?

A. That's right.

Q. Let me show you Exhibit 141 and ask you whether that comes from your records.

A. Yes. I believe it does, um-hmm.

Q. And it's regarding John DeLorean again, is it not?

A. Yes.

MR. M. MORGANROTH: I'd offer Exhibit 141 into evidence, Your Honor.

Appendix B

[144] THE COURT: Any objection to 141?

MR. FREIDBERG: Can't seem to find my copy.

Could I ask you what the Exhibit was?

THE COURT: Show counsel.

MR. M. MORGANROTH: It was Exhibit Number 11 in Frank Shaler's deposition if that's what you're looking for.

MR. FREIDBERG: That's fine. I have no objection.

THE COURT: Received.

Q. (BY MR. MORGANROTH): Mr. Shaler, would you read the paragraph at the top of this statement?

A. "Frank Shaler, please do new financial statement as of January 15th, 1993. We may be doing development deal on farm which would raise the value considerably. I think I am going to sell." I can't make out the next word.

Q. Can you read the word patents?

A. Yes. "Sell some patents" maybe.

* * *

[163] * * *

Q. Let me show you Exhibit 59 — pardon me, 159, and ask you whether or not that's a final of a financial statement for January 15, 1993 for John Z. DeLorean?

A. I believe it is.

Q. And did you prepare that, sir?

A. It looks like it, yes.

MR. M. MORGANROTH: I would offer Exhibit 159 into evidence, Your Honor.

MR. FREIDBERG: No objection, Your Honor.

THE COURT: Received.

Q. (BY MR. MORGANROTH): Mr. Shaler, not to go through the same figures again, for identification purposes, this is the final of the one that had the work sheet for January 15, 1993 that shows the $51,000,000 net worth, is that correct?

[164] A. This one shows a 51,000,000 net worth, yes.

Q. And this is the final of the one that you identified before as a work sheet that had $51,000,000 net note worth, is that correct?

A. Well, let me see the work sheet. This one?

Q. Is that correct, sir?

A. Yes, that's correct.

Q. And that's the one that no longer has the $2,500,000 owed to attorney fees on it — for attorney fees on it, is that correct?

A. It has no liabilities for attorney fees.

Q. Now, sir, let me show you Exhibit 144 and ask you if that's a final — excuse me, if that is a financial statement of November 30, 1990 —

A. Yes, it is.

Q. — that you prepared?

A. Yes.

* * *

[187] * * *

Q. And then you have below it, January 15, 1993, is that what it says?

A. Yes.

Q. And you cross out November 30, 1990, is that correct, sir?

A. Yes. I was just taking an old copy of the 1990 letter and making one up for the secretary for 1993.

Q. You see where it says below, "I have prepared your personal financial statement as of January 15, 1993 from the data you sent to me and it is enclosed?" Do you see that, sir?

A. Yes.

Q. Let me show you Exhibit — let me show you Exhibit 170 and ask you whether or not those are notes that you took regarding John Z. DeLorean?

A. Looks like I made up some questions before I prepared the financial statement as of January 15th, 1993 and called Mr. DeLorean and asked him the questions.

Q. What's the exhibit number on that, sir?

A. 170.

[188] MR. M. MORGANROTH: Court please, I would offer Exhibit 170 into evidence.

MR. FREIDBERG: No objection.

THE COURT: Received.

Q. (BY MR. MORGANROTH): Now, at the top left it says "call J.Z.D.," something to that effect, is that correct?

A. Yes.

Q. January 15, 1993?

A. Yes.

Q. You asked him these questions six of them?

A. Apparently.

Appendix B

Q. Says J.Z.D. questions?

A. Yes. Sometimes I don't ask him all I write down originally.

Q. You don't write down everything you ask him, is that right?

A. Sometimes by the time I get to the telephone — this was written on the 8th of January and I didn't call him until the 15th. Some of them — I don't see an answer after the first one, for instance, so maybe it didn't appear pertinent by the 15th.

Q. Number 1 is the purchase of Logan — pardon [189] me, purchaser of Logan retaining its name, do you see that question?

A. Yes.

Q. So you knew Logan Manufacturing was closing, sale was being closed, Logan Manufacturing's assets in January of 1993, is that correct?

A. Yes.

Q. Tell me, didn't Mr. DeLorean tell you that Mayer Morganroth was supposed to be paid his legal fees out of that closing?

A. No.

Q. Well, do you see where you asked Number 4, loan from brother, zero?

A. Yes.

Q. Didn't you ask him what happened to that loan?

A. No. I just asked him how much it was. How much he owed him as of January 15th, 1993. I'm just preparing a balance sheet. I wasn't preparing anything else.

Q. Well, he had already sent to you a proposed financial statement showing he owed his brother nothing, didn't he, before you asked him these questions?

A. I don't recall. Maybe in one of these [190] prior.

Q. Sir, Mr. DeLorean sent to you a financial statement prepared by him with notes, the changes, and he left out owing his brother any money? Isn't that why you called him and asked him what happened to the loan?

A. That apparently is why I called and him ask him, yes.

Q. And, sir, didn't you next ask him what happened to the legal fees you owed of two and a half million dollars?

A. No. I just asked him if he was sure it was zero.

Q. Because just matter of a few months before, whatever it was, he showed he owed $2,500,000, is that right?

A. Probably.

Q. And you never saw a check in any of his records?

A. I don't see any checks anyway.

Q. You never saw a check register showing he had paid that?

A. I hadn't seen any checks or check registers for a year or two before this. This statement was —

[191] Q. The answer is — excuse me, the answer is you never saw any evidence that that money had been paid, isn't that true?

A. That is true.

Q. So you asked him what happened to it, isn't that right?

A. No. Just wanted to make sure it was zero.

Q. And he told you it was zero?

A. Yes.

Q. Now let me show you Exhibit 180 and ask you if you can identify that as a work sheet financial statement that you prepared?

A. It's a work sheet for a financial statement.

Q. Yes?

A. Yes.

MR. M. MORGANROTH: I would offer Exhibit 180 into evidence, Your Honor.

MR. FREIDBERG: No objection.

THE COURT: Received.

Q. (BY MR. MORGANROTH): Now, sir, do you see where there's a figure for legal fees payable of $500,000?

A. Looks like 2,500,000.

* * *

APPENDIX C — TRANSCRIPT OF TRIAL PROCEEDINGS DATED SEPTEMBER 23, 1994

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Docket No.
93-CV-70848 DT

Detroit, MI
9-23-94
9:00 a.m.

MORGANROTH & MORGANROTH, a Michigan general partnership, and MAYER MORGANROTH,

Plaintiffs,

-vs-

JOHN Z. DE LOREAN and ECCLESIASTES 9:10-11-12, INC., a Delaware corporation, (formerly known as Logan Manufacturing), a Delaware corporation, jointly and severally,

Defendants.

TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE ANNA DIGGS TAYLOR
UNITED STATES DISTRICT JUDGE, and a jury

* * *

Appendix C

Testimony of Frank Shaler

[10] * * *

Q. (BY MR. M. MORGANROTH): Did Mr. DeLorean ever tell you why he gave you a million dollars to take a deduction for Hufstedler and another million dollars for Weitzman plus?

A. I just received the letter from him.

Q. He goes further and says: "To Howard Weitzman, property, Pauma Valley, four million dollars."

Did he ever tell you why he felt four million dollars should be the amount?

A. No.

Q. Then he puts the Howard Weitzman furnishings and equipment, Pauma Valley, one million dollars. Did you ever see a bill of sale of the furnishings?

A. No.

Q. Now, sir, do you recall the company called Ephesians 6:12, Inc.?

A. Yes.

Q. Was that another company that Mr. DeLorean [11] had?

A. A company that he owned all the stock in, yes.

Appendix C

Q. Do you recall on January 15, 1985, he had a corporate meeting of the sole director and sole secretary of the corporation to pay over to John DeLorean four million dollars?

A. I don't specifically remember it. If you want to refresh my memory —

Q. Certainly, sir.

A. I've read it, yes.

Q. Do you recall that he had such a corporate meeting in order to pay himself from Ephesians four million dollars?

A. Well, it notes that the corporate meeting was in Vale, Colorado. I wasn't there.

Q. Yes, sir, but you have a copy of the minutes in your —

A. Yes.

Q. And you received that from Mr. DeLorean, did you not?

A. Yes, I did.

Q. And actually from Ephesians, he did transfer a great deal of money, did he not, in 1985?

A. Well, I know there was some money transferred. [12] I don't recall any of the details at the moment. If you have anything to refresh me —

Q. You don't know if it came out to four million dollars, is that right?

A. That's right.

Q. But you knew there was quite a bit of money transferred, is that right?

A. Well, you'd have to refresh my mind on it. I don't remember that far back.

Q. Well, let's take one item alone. In that particular document if it refreshes your memory, he transferred all the monies coming from his book rights, is that correct?

A. Well, the corporation is buying the rights for the book from Mr. DeLorean, according to this, these minutes, yes.

Q. And the monies are being turned over to Mr. DeLorean, up to four — or four million dollars worth, isn't that true, sir?

A. I think it says — let me see what it says again.

Q. Do you see where it says it pays four million dollars to Mr. John Z. DeLorean?

A. It says shall pay.

Q. [13] Shall pay?

A. Yes.

Q. Do you know if Ephesians got somewhere around a

million dollars as a down payment on this book that was transferred to Mr. DeLorean right away?

A. I know they got something. Without something to refresh my memory, I wouldn't know how much it was.

Q. Do you know he got royalties after he got his down payment from the book?

A. Well, Ephesians owned the rights and they got royalties as I recall.

Q. It also says John Z. DeLorean would draw a salary of $60,000 a month from Ephesians on top of the four million. Do you know whether he did that or not?

A. I don't think he did, no.

Q. You don't know if he — are you sure he didn't?

A. Pretty sure.

Q. But he did draw a great deal of money?

A. On just the royalties he drew.

Q. Pardon?

A. I think he just drew the royalties out of [14] there.

Q. And the royalties was a lot of money, wasn't it?

A. It's — I don't remember. Might be a million bucks, yeah.

MR. FREIDBERG: Your Honor, we'd like to object to "a lot of money." If he asks him how much money —

THE COURT: Sustained.

MR. M. MORGANROTH: He just answered, your Honor, and he said at least a million bucks.

THE WITNESS: That's my recollection.

MR. FREIDBERG: I'll stipulate that's a lot of money.

THE COURT: Apparently it's all relative.

MR. FREIDBERG: That's true.

MR. M. MORGANROTH: Yes, your Honor.

Q. (BY MR. M. MORGANROTH): Do you recall Mr. DeLorean in 1988 conveying to himself the assets of Cristina Holdings of $1,360,000?

A. You'd have to refresh my memory. I don't [15] have any recollection.

Q. Let me show you a February 1, 1988 meeting of the board of directors of Cristina Holdings Corporation.

A. It states that the remaining inventory in Cristina Holdings is being conveyed to Mr. DeLorean in payment of an account payable to him.

Q. How much money?

A. Well, since it says — it says $1,360,000 but it refers to an inventory so somebody had to place that value on it, I would think.

Q. Do you know that — do you place values of Cristina Holdings assets from year to year according to your records?

A. Did I?

Q. Yes, didn't you?

A. I don't think so.

Q. You don't think so. Cristina Holdings actually was a corporation that owned a great deal of art, antique furniture, and a valuable collection of all kinds of, shall we say, art and furniture?

A. Antiques.

Q. Antiques?

[16] A. Mm-hmm, yes.

Q. And in fact Mr. DeLorean had a gentleman by the name of Maur Dubin practically employed full-time acquiring those things, isn't that true?

A. Well, he ran the store they had, I believe.

Q. They had a store. What kind of store did they have?

A. Antiques store, as I understood, and art.

Q. When did Mr. DeLorean have an antiques store?

A. When this corporation was in business. I think it was in the early eighties.

Q. Is that where all that $1,360,000 comes from that's assigned to him, from the antiques store?

A. Yeah. He loaned money to the company to buy items and this is paying back for what he's loaned them.

Q. So that's money he wouldn't show on his tax return?

A. You don't show loans on a tax return.

Q. Exactly. So it's more income that he was getting during that time that —

MR. FREIDBERG: Your Honor, [17] I'm going to object to the "more income." He hasn't said that. He said you don't show it on your income tax return because it's not income. So he's asking an improper question.

MR. M. MORGANROTH: Sir —

MR. FREIDBERG: He's assuming a fact not in evidence.

THE COURT: Sustained.

Q. (BY MR. MORGANROTH): Not taxable income, is that right?

A. Not income at all. I would think it was repaying a debt.

Q. What it is then is monies that were distributed to him for his use during 1988, is that correct, sir?

A. I'd say just his debt was paid.

Q. Let's put it very simply. He got $1,360,000 in 1988 from that instrument and from Cristina Holdings Corp., right?

A. That's a —

MR FREIDBERG. Your Honor, I'd like to object. He's already indicated that he got the inventory. Mr. Morganroth is not saying that he got the money. He's [18] misstating that and assuming facts not in evidence and not what this witness has testified to.

THE COURT: Sustained.

Q. (BY MR. M. MORGANROTH): Sir, did Mr. DeLorean sell the Cristina Holdings inventory for three million dollars in the last year?

A. Last year?

Q. Two years; how's that?

A. 1993 and '94?

Q. 1993 and 1992. Let's take those two years.

A. I don't know. I —

Q. You didn't know that upon sale of his apartment in New York, his co-op, that he held a sale from all of the houses in New York by Sotheby's selling the furniture and inventory from Cristina Holdings?

MR. FREIDBERG: Your Honor, he's asking a question as if he didn't know. The question is what does he know.

Q. (BY MR. M. MORGANROTH): All right, sir. Do you know that? How's that?

A. I know he had a sale of some furniture that was in his apartment, yes.

* * *

[35] * * *

Q. Excuse me. I thought you just testified a little while ago that you knew of that sale of his antiques?

A. Well, I know of the sale of the co-op apartment. I don't recall — maybe I assumed I knew of the sale because he'd have to get rid of the furniture somehow, but I don't know anything specifically about the sale of furniture.

Q. Okay. Did you ever question Mr. DeLorean about a statement that he made to you that he had somehow sold his furnishings at the Pauma Valley Ranch to Howard Weitzman?

A. He told me he sold the — they went to him in connection with his fees.

Q. The furnishings?

A. The furnishings, yes, mm-hmm.

Q. Did you ever say to him you have no bill of sale?

A. No, I never did.

Q. Let me show you your notes, see if that refreshes your memory that you asked him why no bill of sale?

[36] A. Well, these were some notes I made when I was probably preparing the return. I don't see any reference to the fact that I called and asked him these questions.

Q. You wrote down there, did you not, "Why no bill of sale?"

A. Yes, one of the notes I made going through the data I had when I was preparing the return, mm-hmm.

Q. Was it that Mr. DeLorean took the position that somehow the furnishings were gone, he didn't know how, that he should get a deduction because it was part of an attorney's fee for a million dollars he gave to Howard Weitzman in furniture, isn't that true?

A. That's my recollection that he thought the furnishings went with the home to Howard Weitzman.

Q. And he wanted you to deduct that as part of an attorney fee beyond two and a half million dollars, beyond the four or five million dollars we've already been discussing because he

says the furnishings that were missing, somehow he gave to Howard [37] Weitzman, isn't that true?

A. He believed he'd given them to Howard Weitzman and that possibly they should be part of the cost basis for the sale.

Q. And you questioned why no bill of sale, isn't that right?

A. Well, just among a lot of notes I made at the time I was looking over the records. I believe I later found out that they were in the house when it was turned over to Mr. Weitzman so I concluded I didn't need a bill of sale.

Q. You concluded that?

A. Yes.

Q. Did you write that off as an attorney fee to Howard Weitzman, furniture that was missing from Pauma Valley?

A. I believe the return shows the Pauma Valley real estate and furniture on the property and equipment went to Mr. Weitzman for an attorney fee.

Q. Did you ever ask Mr. Weitzman whether he ever got the furniture?

A. I could never get to talk to him. I'd call him and he never returned my call.

[38] Q. Really. Did you ever write him?

A. Yes. No answer.

Q. And you asked that question?

A. No, I didn't ask that question.

Q. In fact, it was Mr. DeLorean's position the furniture had been stolen and therefore it was Mr. Weitzman's responsibility and he got another million dollars because the furniture was stolen out of the place, isn't that correct?

A. Not that I know of, no.

Q. All right, sir. Mr. Shaler, do you remember Mr. DeLorean writing to you in his own handwriting and giving you a list of the furnishings at Pauma Valley which disappeared or went with the sale? Do you remember that?

A. Yes.

Q. Do you recall calling Mr. DeLorean May 24, 1990 —

A. Specifically?

Q. Yes, and asking him for the cost amounts and appraisal of those items? Do you remember that, sir?

A. How would I? Please.

* * *

[41] * * *

Q. This was another million dollars in 1990 that Mr. DeLorean was asking you to deduct?

A. I don't recall ever separating that from the house.

Q. I see. And in 1990 — let's mark this.

(Exhibit 954 was marked for identification)

Q. (BY MR. M. MORGANROTH): This is the appraisal and the note from Mr. DeLorean that you received in 1990 where you make your note May 24, 1990. Is that correct, sir?

A. Yes.

MR. M. MORGANROTH: I would offer Exhibit 954 into evidence, your Honor.

MR. FREIDBERG: I have no objection.

THE COURT: Received.

(Exhibit 954 was received into evidence)

Q. (BY MR. MORGANROTH): For the record, [42] this is on J. Z. DeLorean's notepad. Would you read the page into evidence?

A. "Frank Shaler: This is a list of furnishings at Pauma Valley acquired over the years. I have circled those sent to me. The rest just plain disappeared or went with the sale."

And I made a note — there was no date on that. I made a note below that dated May 24th, 1990, "I called JZD, Mr. DeLorean, and said I need cost amounts, not appraisal amounts. He said he did not know costs." I can't read the next word. "Purchased over a number of years. I asked if they came from Cristina Holdings and he said no. I suggested estimating the cost and he said we might use 50 percent of appraised figures."

Q. And, sir, you left out one thing when you read that. You left out the parentheses. It says: "I have circled those sent to me. The rest just plain disappeared (or went with the sale.)"

A. Correct, mm-hmm.

Q. There's parentheses, sort of an afterthought, [43] "or went with the sale," isn't it?

A. Well —

MR. FREIDBERG: Your Honor, I'm going to object. He's asking now for the conclusion of the writer who put parentheses as an afterthought.

THE COURT: Sustained.

Q. (BY MR. M. MORGANROTH): Tell me, sir, furnishings were shipped to Mr. DeLorean, were they not, from Pauma Valley?

A. Not that I know of.

Q. Well, he's saying the circled ones he had shipped to him?

A. Well, apparently some of them, yes.

Q. Maybe all of them, sir?

A. Not that I know of.

Q. Did Mr. DeLorean ever tell you that his brother Charles had a lien on the furnishings at Pauma Valley?

A. No.

Q. See if this refreshes your memory. By the way, it's in your handwriting, is it not?

A. No, it's not my handwriting.

Q. Okay. Is that part of your records, sir?

A. Apparently.

* * *

[95] * * *

Q. Well, yes, I want to know what you recall, yes. That's fair game.

A. I recall that I was presented a listing showing some payments made by Cristina Holdings to Mr. DeLorean and I said that it looked as if they were making — they paid these expenses and because — and they were in effect paying off a loan that he had made to Cristina Holdings by paying those expenses of his.

Q. Was it your understanding that they conveyed to him assets of Cristina Corporation to pay off the loan?

MR. M. MORGANROTH: Objection, your Honor. I'd like to know who "they" is.

MR. FREIDBERG: Cristina Corporation.

Q. (BY MR. FREIDBERG): Was it your understanding that Cristina Holding Corporation owned by Mr. DeLorean transferred assets to him in payment of the loan?

A. I don't believe I have any knowledge of anything like that.

* * *

APPENDIX D — TRANSCRIPT OF TRIAL PROCEEDINGS DATED SEPTEMBER 28, 1994

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CIVIL ACTION NO. 93 CV 70848 DT

MORGANROTH & MORGANROTH, a Michigan partnership, and MAYER MORGANROTH,

Plaintiffs,

v.

JOHN Z. DELOREAN, and ECCLESIASTES 9:10-11-12, INC., a Delaware corporation, (formerly known as Logan Manufacturing, a Delaware corporation), jointly and severally,

Defendants.

JURY TRIAL PROCEEDINGS
AM SESSION

BEFORE THE HONORABLE ANNA DIGGS TAYLOR
United States District Judge
737 US Courthouse & Federal Building
231 Lafayette Boulevard West
Detroit, Michigan
Wednesday, September 28, 1994

Appendix D

APPEARANCES:

MAYER MORGANROTH, ESQ.,
JEFFREY MORGANROTH, ESQ.,
ELEANOR NADLER, ESQ.,
In behalf of Plaintiffs.

STANLEY FLESHMAN, ESQ.,
In behalf of Defendants.

* * *

Testimony of Walter Keating

[74] * * *

Q. Now, sir, are you a client of mine?

A. Yes.

Q. And, sir, who referred you to me or recommended me to you?

A. John DeLorean.

Q. And when did he recommend me to you for you to use me [75] as your attorney?

A. In April 1991 or thereabouts. April 15th or thereabouts.

Q. How long had you known John DeLorean before April 1991?

A. Since he was General Manager of Chevrolet.

Q. How many years would that be?

A. 20 years ago, I think.

Q. Did you consider yourself —

A. I knew him before that. I knew him when we were kids.

Q. Did you consider yourself a friend of his?

A. Yes.

Q. Tell me in April of 1991, when Mr. DeLorean recommended that you contact me to become your attorney, was that over a telephone or in person that he did that?

A. Well, when he heard that I had a problem, a very serious personal problem, he called me and he said, Walter, I think you ought to think very seriously about getting some really — the best representation that you can get.

And he says the best legal mind that I know in the United States is Mayer Morganroth.

And I took his advice and hired you.

Q. Did he say anything else regarding whether or not Morganroth had represented Mr. DeLorean?

A. He said, yes, you were the basis of all of his— [76] solving of all of his personal problems and his business asset problems.

Q. And tell me, can you remember anything else he said at that time?

A. Other than to say that he was in the habit of contacting you, Mayor Morganroth as often as possible preferably I'm talking on business matters, preferably on a daily basis, to make sure that you were going in the proper direction.

And I found that to be very good advice, as a matter of fact.

Q. Tell me, sir, did you hire Mayer Morganroth to represent you?

A. Yes, I did, happily.

Q. And, sir, was there an hourly fee arrangement made with you?

A. Yes.

Q. And what was that hourly fee?

A. $400 an hour.

Q. And did we ever reduce that to writing or make a written contract of it?

A. Not that I know of.

Q. Tell me, sir, after Mayer Morganroth began to represent you in the problem as you related before, was that a litigation or trial?

[77] A. Yes.

Q. And did you hire Mayer Morganroth after that, after that trial was over for other matters?

A. Yes, I did.

Q. Is he still your lawyer in matters in litigations?

A. Yes, he is.

Q. Tell me, sir, did you ever talk to Mr. DeLorean after the first time that he recommended Mayer Morganroth and discuss —

A. Many times.

Q. — was there any discussions between you and Mr. DeLorean as to Mayer Morganroth?

A. Yes, he reiterated his position that I'd do very well to contact Mr. Morganroth on a daily basis in order to keep my business on the straight and narrow and it was very good advice.

Q. When was the last time Mr. DeLorean told you that?

A. Let me see. Several times in '92. And I see — I see John all the time.

Q. Tell me, did Morganroth and you ever come to any conclusion as to what should be done regarding billing and time sheets?

A. Yes.

Q. What would be done with time sheets after we agreed that on a particular billing?

[78] A. It was recommended to me that when we get our billing, there will be a time sheet connected to it.

And that what we should do in order to get out of the possibility of having the record being part of the — any lawyers thing that he can come in and depose, that we destroy it and just have the cover sheet that shows the amount of the total bill.

Q. And, sir, have you agreed to and paid every bill as submitted to you during the last — since 1991?

A. Yes, sir. Not only that, but I do the same thing with other lawyers now.

* * *

[84] Q. And you testified that you were informed or recommended to you that the time sheets be destroyed; is that right?

A. Yes.

Q. That's the time sheets recording the time spent by your attorney?

A. Yes.

Q. That recommendation was given to you by Mr. Morganroth?

A. Yes, to protect them from discovery.

Q. You have no written contract with Mr. Morganroth?

A. No, no.

Q. The criminal case, was that on an hourly basis or flat fee?

A. Hourly. When you say "flat fee", you mean he sent me a bill for a flat amount?

Q. Yeah.

A. No, hourly.

Q. How do you know how many hours he put in?

A. It was on the sheet.

Q. So you actually saw some sheet at sometime that had —

A. Yes.

Q. — a representation of the hours and time?

A. How many hours, right.

Q. Would it say something — little time sheet that says [85] first day of trial whenever that was.

The trial was in July of 1991, correct?

A. Yes.

Q. Okay. So he gave a time sheet that says July 21, 1991 trial appearance two hours, three hours whatever?

A. Uh-huh.

Q. Correct?

A. Yes.

Q. And you could compare that time sheet to your memory as to what happened on that day which you saw Mr. Morganroth do?

A. Correct.

Q. And you — did you go through all those time sheets?

A. I sure did.

Q. You when through everyone of them?

A. Yes, sir.

Q. It wasn't until after you went through every one of those time sheets and verified to your own personal knowledge that the time had been spent that you agreed to the bill; is that correct?

A. You mean he sent me a whole bunch of them at once, is that what you're saying or as he sent me the bills?

Q. As he sent you the bills you went through the time sheets?

A. One time sheet; with it that says how much time he [86] spent on each thing.

Q. As far as like the back up documents, if there were any?

A. There were none that I know of.

Q. You never saw any of those?

A. Just time break down.

Q. The time break down came in some kind of letter?

A. Mayer Morganroth spent so much time at $400 an hour.

And one of the other people in his office spent so much time at so much an hour if they were there, you know. And that's the way the time sheet worked out.

Q. Okay. But did the time sheet — whatever we want to call this document, did it say spent four hours on such-and-such a day doing such-and-such a thing?

A. I don't think he brought it down that close, but I'm not sure.

Q. Did you ever see any such document that documented how much time Mr. Morganroth spent on a particular day do doing a particular task?

A. Yes.

Q. What was it?

A. The piece that was connected to the cover sheet, you know, which is the bill, the statement. That's what I'm looking, for the statement.

Q. Excuse me. What was your understanding of what was [87] being destroyed?

A. The hourly rate. Not the hourly rate, but the hours spent by each individual person and where it was.

Q. Was that some document that you actually had seen at some point in time?

You saw it and said, okay, you can destroy this now?

A. We did.

Q. Okay. You saw it and approved it and then allowed it to be destroyed; is that right?

A. Or agreed with it, yes. I never had to disagree with any one of his statements.

Q. Now for the criminal case in 1991, how long did that take to try?

A. I would say three weeks.

Appendix D

Q. You had Mr. Thomas Kinney, Mr. Robert Forest, Mr. Morganroth present?

A. Yes. Mr. Morganroth was the lead attorney for that.

Q. When you say "lead attorney", was he the one that got up, did the opening statement, closing arguments?

A. No, no. He was the lead attorney on the — when you get to the — to the opening statement and stuff, my heavens, all the work is done.

You know, all that stuff that he had to go through before, that was unbelievable.

* * *

Testimony of Alfred Rapetti

[91] Q. And back in 1975, and thereafter, did you have any business dealings with Mr. DeLorean?

A. Yes.

Q. When you first start being involved with Mr. DeLorean regarding business dealings —

A. There was some involvement in the mid 70's far as the car company was concerned.

Then there were no dealings from the mid 70's to 1987 when I met with him and we had discussion as to possible sale of some of his assets.

Q. When was that meeting, if you recall?

A. Probably in May, June 1987.

Q. Did you undertake to do some work regarding selling some of his assets?

A. Yes.

Q. And did you after that time, meet with him and talk to him fairly regularly?

A. Yes.

Q. And did you attempt to sell any of his assets?

A. Yes.

Q. Did you attempt to get him any financing on any of his assets as well?

A. Yes.

Q. Did there come a time when you met Mayer Morganroth?

[92] A. Yes.

Q. And when was that, if you recall?

A. I believe the first time was at one of the hearings in Detroit. No, I'm sorry. It was before that because it was — had

to do with the restraints that the — that DSQ put on the company.

Q. Now, sir, in 1987–1988, you were working to get the sale of Logan Manufacturing or other assets of Mr. DeLorean's; is that correct?

A. Yes.

Q. You would know that Paul Wallace transaction because you actually negotiated it; isn't that true?

THE READER: I'm sorry. I'm not sure where you are.

MS. NADLER: I went to page 10.

A. Yes.

Q. You were the moving party that did all the negotiations as far as the business negotiations back and forth with Wallace in order to purchase the assets of Logan Manufacturing, correct?

A. Yes.

Q. Also with the Logan manufacturing sales that took place, Mr. Wallace, John DeLorean, was allowed to keep certain assets; is that not true?

A. Yes.

[93] Q. In any event, over the span of 1987–88–89 and '90 and '91 and 1992, were there many offers to Mr. DeLorean to purchase Logan Manufacturing?

A. Yes.

Q. And did you — could you quantify how many?

A. During that period of time, there were probably on a serious basis, probably eight.

Q. Okay. When you say a serious basis, there were also numerous others that —

A. Yes.

Q. — that were offered? Okay.

Would you say there were offers exceeding 20 or 30 of them that were submitted —

A. Probably.

Q. — to Mr. DeLorean?

Tell me when you get to the serious basis you mean that the offer that was submitted that Mr. DeLorean started to consider signing; is that correct?

A. Yes.

Q. Tell me, could you control Mr. DeLorean and advise him whether or not a deal was good or bad?

A. I gave the advice, but it was always his decision.

Appendix D

* * *

[112] Q. Tell me, sir, do you have an understanding that Mr. DeLorean of Logan Manufacturing owed Mayer Morganroth a substantial amount of fees as of January 5, 1993?

A. It was my understanding there was a substantial amount of fees that were owed, yes.

Q. And that was something that was supposed to be paid after the closing according to the agreement of Mr. DeLorean and myself, Mr. Morganroth, that you understood; is that correct?

A. I — I took it for granted that the obligation was going to be paid.

Q. In fact, in order to have the transaction closed with Paul Wallace Mr. Morganroth agreed to subordinate his debt to that closing so as soon as possible the transaction could close; isn't that true?

A. Yes.

Q. And that was under the basis that Mr. Morganroth was owed that money, but would permit Wallace to close without it being an obligation of Wallace to pay Morganroth, correct?

A. Yes.

Q. Mr. Rapetti, do you recall during '87–88, that Mr. DeLorean said these other buyers are getting financing in order to buy the company.

Appendix D

Mr. Rapetti, why don't you get me the financing [113] so I can pay off everybody and get the financing for Logan so I can, keep Logan.

Do you remember him wanting to go that direction?

A. Yes.

Q. Tell me, did you get to see or meet with Roy Nesseth while you were performing services for Logan?

A. I have met him, yes.

Q. Did you ever see him at Logan?

A. Yes.

Q. Did you ever tell John DeLorean shouldn't be there?

A. Yes.

Q. Did Mr. DeLorean listen to you?

A. Sometimes.

Q. But somehow Roy Nesseth always got back there, right?

A. Yes.

Q. Do you remember frantically calling me in December 1992 saying that "Roy Nesseth is back at Logan. He's going to destroy another deal"?

Appendix D

A. Yes.

Q. And do you recall me telling you "I told Mr. DeLorean to keep that man away from there but he never seems to listen to me"?

A. Yes.

* * *

APPENDIX E — TRANSCRIPT OF TRIAL PROCEEDINGS DATED DECEMBER 1, 1994

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Civil Action No. 93-CV-70848-DT

MORGANROTH & MORGANROTH, a Michigan partnership, and MAYER MORGANROTH,

Plaintiffs,

-v-

JOHN Z. DELOREAN and ECCLESIASTES 9:10-11:12, INC., a Delaware corporation, (formerly known as Logan Manufacturing), a Delaware corporation, Jointly and Severally,

Defendants.

TRIAL

Proceedings had and testimony taken in the above-entitled matter before HONORABLE ANNA DIGGS TAYLOR, United States District Court, at Detroit, Michigan, on Thursday, December 1, 1994.

APPEARANCES:

MORGANROTH & MORGANROTH, P.C.
2000 Town Center, Suite 2000
Southfield, Michigan 48075
(BY: MAYER MORGANROTH, ESQ.)

Appendix E

-AND-

KRAMER, LEVIN, NATFALIS, NESSEN, KAMIN & FRANKEL
919 Third Avenue
New York, New York 10022
(BY: ELLEN R. NADLER, ATTORNEY AT LAW)

Appearing on behalf of Plaintiffs.

* * *

Testimony of John Z. DeLorean

[98] * * *

"Q. In August of 1992, you put into your book that you didn't have money to give to me. You didn't put in your book that you weren't paying me because of the fact of some errors, did you? Did you, sir?

"A. I don't know what put in the book.

"Q. You didn't tell me there were any errors that you were claiming in August of 1992, you just told me at that particular time that you didn't have any money right then, isn't that true, it all had to go for DSQ and for money to Logan and for you to live on, and you would pay me when the closing took place.

"A. I never said I would pay you. I said I would handle you or you might have interpreted that.

* * *

APPENDIX F — TRANSCRIPT OF TRIAL PROCEEDINGS DATED DECEMBER 1, 1994

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 93-CV-70848-DT

MORGANROTH & MORGANROTH, a Michigan Partnership, and MAYER MORGANROTH,

Plaintiffs,

-v-

JOHN Z. DELOREAN and ECCLESIASTES 9:10-11:12, INC., a Delaware corporation, (formerly known as Logan Manufacturing), a Delaware corporation, Jointly and Severally,

Defendants.

TRIAL

Proceedings had and testimony taken in the above-entitled matter before HONORABLE ANNA DIGGS TAYLOR, United States District Court, at Detroit, Michigan, on Thursday, December 1, 1994.

APPEARANCES:

MORGANROTH & MORGANROTH, P.C.
2000 Town Center, Suite 2000
Southfield, Michigan 48075
(BY: MAYER MORGANROTH, ESQ.)

-AND-

Appendix F

* * *

Testimony of John Z. DeLorean

[43] * * *

"Q. You didn't send me a check for four fifty,

"A. Somebody did get a check for four fifty.

"Q. After Logan paid a portion of the bill they owed me and you paid a portion.

"A. Not a portion. You said it was paid in full.

"Q. I billed you for years after that. Did you ever write one thing to me contesting any of those bills; did you?

"A. Not that I know of.

"Q. And you carried it for two million two in your financial statement, and then two million five in your financial statement owing me personally, didn't you, sir?

"A. Yes, sir. Whatever you told me, I wrote it down.

"Q. This is a bill for December 3rd, 1990, identified as Plaintiff's Exhibit 374, Morganroth & Morganroth, December 3, 1990, Mr. [44] John Z. DeLorean, RE: Fees for services rendered: Balance total including costs, two million five hundred and twenty thousand eight hundred and nineteen dollars, signed Mayer Morganroth. Do you remember seeing that, sir?

Appendix F

"A. No, I don't, but I know I got a lot of bills at different times.

"Q. Did you at any time ever send me a letter that that bill wasn't accurate or correct?

"A. No, I told you on the telephone.

"Q. Sir, did you ever send me a letter saying that wasn't accurate or correct?

"A. No, not that I know of.

"Q. Let me show you Exhibit — by the way, sir, Exhibit 374, December 3, 1990, is almost two months after this settlement was made in front of Judge Rosen with DSQ; isn't that true, sir?

"A. Probably.

"Q. For the record, I will read in Exhibit 447, which was January 15, 1986.

"Dear Mike,

"We begin a new year. Hopefully a year that will see the end of the harassment [45] I'm subject to. I want to thank you for your friendship and support. As one man fighting those giant firms, you've already taken a serious toll!" — with a Capital "T" underlined twice.

"Best wishes for the New Year. May it be your best ever.

Appendix F

"So then, you still hadn't paid me any money; had you?

"A. You kept on working. You figured I was going to pay.

"Q. Yes, I sure did.

"A. Because you knew I was tied up. I didn't have any money to pay anybody.

"Q. Exhibit 532, is dated May 7, 1991, addressed to Mr. John Z. DeLorean. Sir, do you recall receiving the May 7, 1991, Exhibit 532, bill?

"A. No, I don't recall. I don't recall that, but I know I recall whatever you sent me I put down.

"Q. Put down where?

"A. Whereever we put it down.

* * *

[50] * * *

"Q. For identification, Exhibit 364, this is a letter of December 21, 1992, to John Z. DeLorean, Road One, Lamington Farm, from Morganroth & Morganroth, Mayer Morganroth, and I ask you if you recall receiving this letter, sir?

"A. I don't recall it, but doesn't mean I didn't get it. I just don't recall it.

Appendix F

"Q. For the record, the letter states as follows:

"Dear John,

"I write to you with respect to a large unpaid balance of legal fees and costs past due and owing to my law firm by Logan Manufacturing and you, and to confirm our telephone conversation today.

"During today's telephone conversation when we again discussed the significant balance owing to my law firm by Logan Manufacturing and you I stressed that my law firm and I really need at least a substantial payment of said unpaid balance to [51] be made in connection with the closing of the Logan Manufacturing assets sale. Nevertheless, based upon your representation that all unpaid invoices owed by Logan Manufacturing and you to my law firm will be satisifed in full on about the end of January, 1993. I agreed to wait until such time for payment.

"In addition, I also agreed during our telephone conversation of today, that I will reduce the balance of the outstanding invoices by four hundred thousand dollars charged for the Cork Gully matter in the event that all amounts owed by Logan Manufacturing and you exclusive of the four hundred thousand dollars are satisfied on or before the end of January, 1993.

"You don't recall this matter, sir?

"A. No.

"Q. If I were to tell you that you had a notation in your journal regarding that letter and the conversation we had would that refresh your memory?

Appendix F

"A. No, but I didn't say I didn't get it. I just don't remember it right now. I [52] get a pile of mail this high every day.

"Q. Tell me, sir, didn't you on December the 20th — December 21st, excuse me — didn't you on December 21st tell me that you were going to pay that bill by the end of January, 1993, the entire bill?

"A. No, I didn't. I said it would be handled. And by that I was in my mind implying that we were going to get this thing straightened out. But that doesn't mean you wouldn't have taken it that way. I'm not denying that.

"Q. Handled?

"A. Yes.

"Q. But you said it would be paid, taken care of; didn't you?

"A. No, I didn't. I never have said that.

"Q. Really. You never said it would be taken care of.

"A. I may have said it would be taken care of meaning the same as handled, handled taken care of, meaning we will sit down and straighten this thing out. And when we do, you will get paid what you're properly owed, [53] and I will get paid by your insurance company.

"Q. When did you say to me at any time you will get paid by my insurance company?

"A. I didn't say that.

"Q. All you said was, after I said if you pay me the entire amount by the end of January you promised that we'd give you a four hundred thousand dollar reduction, do you remember what you said?

"A. No.

"Q. You said I will take care of that. I will be taking care of it prompt; do you remember that?

"A. No, I'm sure I didn't say that.

"Q. Now, sir, I'm going to ask you a question: How did you get Ed Freidberg to represent you in 1990-1991? He did represent you in 1990-1991, didn't he, and '92, didn't he?

"A. I paid him.

"Q. But you didn't pay me any money during that time.

"A. Because I had planned at some time that we would straighten that out.

"Q. By the way, the day after or even [54] the very same day that the closing took place in New York of Logan Manufacturing, you sent a one hundred fifty thousand dollar check to Ed Freidberg, didn't you, as a retainer?

"A. Very soon thereafter.

"Q. What was that for? To sue me?

"A. No, it was to handle you.

"Q. I see. So you could pay him to handle me, but you couldn't pay me for those years.

"A. It was to take care of you.

"Q. I see.

"A. That is what "take care of" means.

"Q. And, sir, when you got the bill in 1992, December, and you got this letter in 1992, you didn't say you disagreed with anything. You said it would be taken care of; isn't that true?

"A. I told you what I meant.

"Q. You told me what I meant. Why didn't you say what you meant was it's too hard for you to tell the truth?

"A. No, it's just not the right time.

"Q. It wasn't the right time to tell the truth?

[55] "A. I did tell you the truth. I told you my version of the truth as oppose to your version.

"Q. The fact is you were afraid that I wouldn't work and get the sales close in Logan Manufacturing; isn't that true?

"A. No, the sale was — when was that? Was it after?

Appendix F

"Q. January 5th, 1993.

"A. What was the date of that thing?

"Q. December 26th, 1992.

"A. I don't recall. I think everything was done by that point in time.

"Q. Couldn't be done. Remember you went there on Christmas Day and you walked out. The deal was aborted and you walked out and there wasn't a deal.

"A. Not because I wanted to change any documents. It was because they hadn't finished their study of the charges against me and they wanted to hold back too much money, and I refused to do that.

"Q. That was January — December if you recall, I seen you on Christmas.

"A. Oh.

[56] "Q. Do you remember now I seen you on Christmas because they said there was no deal any longer because they couldn't come up. And by the way and by 'they' I'm taking about the purchaser, Wallace, could not come up with the extra million dollars as a down payment rather than the five hundred and seventy-five; as you recall that?

"A. Just vaguely.

Appendix F

"Q. Do you remember I flew in on Christmas Day and sat with Wallace's attorney, Howard Petty, and we worked the entire" — "with Wallace's attorney and with Howard Petty, and we worked the entire day into the evening and we contacted the bankers at home in Utah wherein I convinced the bankers to make the payment they were going to make in a year from then, right, so they could" — "so that the price could go up to five million seventy fifty as long as your down payment or else the deal was a no go; do you remember that?

"A. No, but it's possible.

* * *

APPENDIX G — TRANSCRIPT OF TRIAL PROCEEDINGS DATED DECEMBER 6, 1994

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CIVIL ACTION
No. 93-CV-70848-DI

MORGANROTH & MORGANROTH, a Michigan Partnership, and MAYER MORGANROTH,

Plaintiffs,

-v-

JOHN Z. DELOREAN and ECCLESIASTES 9:10-11-12, INC., a Delaware corporation, (formerly known as Logan Manufacturing), a Delaware corporation, jointly and severally,

Defendants.

Proceedings held in the above-entitled case before Judge Anna Diggs Taylor, taken by Patricia A. Everett, CSR-4602, a Certified Shorthand Reporter and Notary Public, in and for Oakland County, Michigan (acting in Wayne County, Michigan), at 740 United States Courthouse, Detroit, Michigan, on the 6th day of December, 1994, commencing at or about 9:00 a.m., pursuant to the applicable court rules.

* * *

Appendix G

Testimony of Steven Fellows

[36] * * *

Q. (By Mr. Morganroth): During the eighties did you have the opportunity to see me work?

A. Many times.

Q. Would you come into the office on Saturdays?

A. I would.

Q. Did you see me working on Saturdays?

A. Always, unless you were out of town.

[37] Q. How about on Sundays?

A. On Sundays if I came in you were there.

Q. And how about at nights, did you ever come to my house and see me working at nights?

A. On several occasions. In fact, I stopped coming. I used to call you to come over to watch Monday Night Football once in a while. And we would sit in your lower level and you would dictate through the entire football game. Your wife would fall asleep on the couch, and I would say goodbye to you about midnight because you were still dictating, yes.

Q. And tell me, sir, did I do that throughout the years that you were in the office, that kind of work?

A. Yes. You've always worked, for the most part, seven days a week, day and night.

Q. And how about Mr. DeLorean during the eighties, did he come into the office often?

A. Yes.

Q. Tell me, did he ever call at night?

A. Yes.

Q. How often?

A. I feel that — I can only answer that as to calls that I took. If you were on your other line and [38] the phone would ring, I would pick it up. I would just tell you on many occasions I answered the phone after hours and John DeLorean was on the phone. Also there were many times I heard other attorneys page you or call you to let you know Mr. DeLorean was calling.

Q. Throughout all the years that you were in the office with me, did John DeLorean ever tell you that he was unhappy or dissatisfied with anything I did for him?

A. He told me the contrary. We spoke from time to time and he often told me that he thought you were the best.

Q. And tell me, during the period of time that we were together in the office — I never asked you this — well, did you form any opinion as to my capabilities as a lawyer?

A. Yes, I have.

Appendix G

Q. And what was your opinion?

A. You were one of the best practitioners that I've ever known. I called you at one time an enigma. You're one of the few people that have been in practice as long as you have and has stayed a general practitioner. You've handled virtually every type of case. Over the years I've had to [39] go off into a specialty. I couldn't keep up with a general practice, and I feel that you're an excellent attorney.

Q. Now, you talked about the tremendous workload that I had in your direct examination. Did I give work to other lawyers in the office?

A. Yes, you did.

Q. And were there times over the years where I supported the other lawyers by paying the rent and by giving them money when they needed it?

A. That's true.

* * *

Testimony of Maria Reed

[143] * * *

CROSS-EXAMINATION

BY MR. MORGANROTH:

Q. Mrs. Reed, you still work for me, don't you?

A. Yes, I do.

Q. And have worked for me part-time for a few years now again?

A. Yes.

Q. And you work at nights?

A. I work at night, Saturdays, Sundays.

Q. Do I work at nights and Saturdays and Sundays?

A. Yes.

[144] Q. And there's other secretaries in the office but you work after-hours and Saturdays and Sundays now; is that correct?

A. Yes.

Q. And you've done that for the last few years for me; correct?

A. Yes.

* * *

[160] * * *

Q. Now, I thought that from 1986 to '91 you were working on a part-time basis for Mr. Morganroth; is that correct?

Appendix G

A. Sometimes I would stay after work and do things for him, overload of work that he had. But it was never on the DeLorean thing, it was just other, you know, cases.

Q. But you would be working basically after 5:00 for Mr. Morganroth?

A. Yes.

Q. And you would be working sometimes on Saturdays.

A. Sometimes on Saturdays.

* * *

APPENDIX H — TRANSCRIPT OF TRIAL DATED DECEMBER 22, 1994

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Civil Action No. 93-CV-70848-DT
Detroit, Michigan
Thursday, December 22, 1994

MORGANROTH & MORGANROTH, a Michigan general partnership, and MAYER MORGANROTH,

Plaintiffs,

-v-

JOHN Z. DELOREAN and ECCLESIASTES 9:10-11-12, INC., a Delaware corporation, (formerly known as Logan Manufacturing), a Delaware corporation, jointly and severally,

Defendants.

TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE ANNA DIGGS TAYLOR
UNITED STATES DISTRICT COURT JUDGE, and a jury.

APPEARANCES: –

For the Plaintiffs: MAYER MORGANROTH, ESQ.
ELLEN R. NADLER, ESQ.
JEFFREY B. MORGANROTH, ESQ.

NOT PRESENT:
For the Defendants: EDWARD FREIDBERG, ESQ.

Appendix H

* * *

[6] * * *

THE COURT: The court was in receipt a note at 10:45 saying:

QUESTION: Page 97, Section 1962(b) reads the same as page 103, Section 1962(c). Is this intentional?

And I've notified the — well Mr. Pierce is still not here, although he did call to ask what the last questions were and I had the law clerk tell him he simply must come downtown.

And this is the note I planned to return.

Ignore page 103 because it repeats 1962(b) instead of reciting 1962(c). Simply be governed by page 104 which correctly states the elements of 1962(c) which is directed against a defendant who "conducted or participated in the conduct of the enterprise through that pattern".

[7] Is there an objection to this?

MR. MORGANROTH: No.

MS. NADLER: No, Your Honor.

THE COURT: All right.

(Whereupon court was in recess. Court was back in session at about 12:45 p.m.)

Appendix H

THE COURT: Earlier this morning, the court received a note from the jury requesting index of exhibits and I told the law clerk just to tell them to wait until after the New Year so I could confirm with counsel.

But in the meanwhile, Ms. Nadler has produced the list of exhibits, index of exhibits, that both sides apparently had relied upon during trial and she has redacted the names of the witnesses who introduced each exhibit and any other information other than the list and the number of each one.

So I'll ask if counsel have any objection, now, to the court sending in this list to the jury. And there are copies for each member of the jury.

Any objection?

MS. NADLER: We have no objection.

MS. FALTER: No objection, Your Honor.

THE COURT: All right. I'll keep mine. We'll take in there all right.

* * *

APPENDIX I — PERSONAL FINANCIAL STATEMENT OF JOHN Z. DELOREAN DATED JANUARY 15, 1993

JOHN Z. DELOREAN

PERSONAL FINANCIAL STATEMENT

January 15, 1993

Assets

Bank accounts	$1,500,000
Notes receivable from sale of Logan Manufacturing Company	2,850,000
Preferred stock from sale of Logan Manufacturing Company	4,500,000
Real estate:	
Land and industrial buildings, Logan, Utah, leased for ten years with rent at $240,000 a year plus profit sharing for the first three years and $300,000 a year for the last seven years. Leasee has the option to purchase for $2,500,000	2,500,000
Lamington Farm, Bedminster, New Jersey, 434 acres with residence and ten rental properties providing more than	

Appendix I

$200,00 of gross rental income. Estimated market value	30,000,000	
Oil and mineral interests	50,000	
Patent, trade mark and marketing rights acquired from De Lorean Motor Company at acquisition cost	10,000,000	
Other patents at estimated market value	5,000,000	
Judgment against H.L. Weitzman	600,000	$57,000,000
Liabilities		
Private loan secured by first mortgage on New Jersey farm. Interest rate is 1/4% under prime until the year 2000		6,000,000
Net worth		$51,000,000

APPENDIX J — STIPULATION OF FACTS

STIPULATION OF FACTS

1. Ecclesiastes 9:10-11-12, Inc. was formerly known as Logan Manufacturing Company ("Logan").

2. Logan changed its name to Ecclesiastes 9:10-11-12, Inc. ("Ecclesiastes") in or about January 1993.

3. DeLorean Research Limited Partnership ("DRLP") was a limited partnership formed in 1979 for the purpose of investing in the research and development of the DeLorean sports car.

4. GPD was established and controlled by Colin Chapman ("Chapman") and Fred Bushell ("Bushell").

5. DRLP entered into a contract with GPD regarding the performance of the research and development of the DeLorean sports car (the "DRLP/GPD Contracts").

6. The DRLP/GPD Contract called for GPD to cause the research and development or the DeLorean sports car to be performed by subcontracting the work to Lotus.

7. A private placement memorandum with attachments and exhibits was presented to HELP and its partners for the supposed purpose of soliciting and raising $20.0 million for research and development.

8. $17.8 million was raised from DRLP pursuant to the DRLP private placement memorandum and attachments and exhibits.

9. Chapman was the chairman and controlling shareholder of Lotus.

10. Bushell was the Chief Financial Officer of Lotus.

11. By February 25, 1982, DMCL had been placed in receivership based upon agreement by the Board of Directors of DMCL.

12. In 1984, a company known as Pacific International Equipment Inc. ("Pacific") attempted to purchase the assets of Logan from the DMC Bankruptcy Trustee.

13. In or about 1982, Howard Weitzman ("Weitzman") was retained to defend DeLorean in the California criminal case.

14. Weitzman eventually was named lead trial counsel in DeLorean's California criminal case.

15. Weitzman represented DeLorean and/or Logan in civil lawsuits through 1985.

16. Intentionally deleted.

17. Weitzman received $1.1 million from the ultimate sale of the Pauma Valley Property.

18. In 1986, Weitzman joined the law firm of Wyman Bautzer.

19. DeLorean hired Edward Freidberg ("Freidberg") and the Freidberg Law Corporation as counsel in connection with the Wyman Bautzer action.

20. Freidberg and his firm filed a countersuit against Weitzman in the Wyman Bautzer action for breach of fiduciary duties, negligence, and over payment of attorney fees.

21. In or about 1985, DeLorean testified under oath that he would have put his head in an oven had Weitzman not continued to provide legal services through the conclusion of both criminal actions and that no amount of money could repay Weitzman for saving DeLorean's life and for the job Weitzman performed for him.

22. Bill Simon ("Simon") and his firm Hertzog, Calamari and Gleason ("HC&G") were retained in or about 1982 to defend DeLorean and Logan.

23. DeLorean and Logan represented that they would pay Simon's customary hourly rate for legal services.

24. In or about October 1983, Simon and HC&G withdrew as counsel for DeLorean and Logan in all matters for non-payment of legal fees.

25. On or about October 20, 1983, DeLorean sent a letter to the presiding judge in the matters handled by Simon for the purpose of requesting that Simon not be permitted to withdraw since, according to DeLorean, DeLorean did not have any funds to pay for legal services at that time.

26. In or about 1984, Simon and HC&G instituted legal proceedings against DeLorean in an attempt to collect the unpaid balance due them in the amount of $87,556.60.

27. DeLorean asserted a malpractice counterclaim against Simon and HC&G which was premised on the basis that Simon had negligently allowed DeLorean's adversaries to obtain personal and confidential documents located at DeLorean New Jersey estate during Simon's supervision.

28. Alan Greenberg ("Greenberg") and Graubard Mollen Dannett Horvitz and Pomerantz ("GMDH&P") were retained by DeLorean in connection with two tax matters.

29. On January 24, 1989, Weinberg and GMDH&P were also retained to provide legal services in connection with the DSQ Enforcement Action.

30. On or about January 5, 1993, the sale of the assets of Logan was consummated.

31. No monies were paid to Weinberg, Greenberg or their firm from the proceeds of the sale of Logan's assets.

32. Freidberg and his firm were paid an initial $250,000 retainer by DeLorean and Logan for the malpractice action to be filed against Morganroth and his firm, and Weinberg, Greenberg and their firm.

33. DeLorean and Logan never complained to Weinberg, Greenberg or their firm that any mistakes were made by them during any time that they provided legal services to DeLorean and Logan.

34. On or about February 2, 1993, DeLorean and Logan instituted malpractice claims against Morganroth and his firm and Weinberg, Greenberg, and their firm in New York.

35. Morganroth and his firm were not told that Logan sent Freidberg and his firm an initial $250,000 retainer in 1990.

36. Cristina Holdings Corporation purchased art, antiques, and furniture, some of which were then put to personal use by DeLorean.

37. DeLorean and others sent letters through the mails in connection with the Eureka/DMCI transaction.

38. Numerous telephone calls were made by DeLorean and others in connection with the Eureka/DMCI transaction.

39. Pleadings, motions, and correspondence were filed with the court and served upon opposing counsel and interested parties through the mail in connection with Pacific's attempt to purchase Logan's assets from the DMC Bankruptcy Trustee.

40. Numerous telephone calls were made by and among DeLorean, Nesseth, and others in correction with Pacific's attempt to purchase Logan's assets from the DMC Bankruptcy Trustee.

41. DeLorean sent letters to Weitzman through the mails in connection with unpaid legal fees and costs offer to Weitzman.

42. DeLorean and Logan caused the mails to be used on numerous occasions in connection with legal services provided by Weitzman to them.

43. DeLorean placed telephone calls to Weitzman in connection with unpaid legal fees and costs owed to Weitzman.

Appendix J

44. DeLorean and Logan caused the wires to be used on numerous occasions in connection with legal services provided by Weitzman to them.

45. Kimmerly received numerous letters from DeLorean through the mail during the course of providing legal services.

46. Kimmerly received a $50,000 check from Cristina Corporation through the mail.

47. DeLorean and Logan placed telephone calls to Kimmerly in connection with legal services provided by Kimmerly to them.

48. DeLorean sent a letter through the mail to a judge and others in an effort to prevent Simon and his firm from withdrawing notwithstanding the failure to pay legal fees.

49. DeLorean and Logan caused the mails to be used in connection with the legal services provided by Simon to them.

50. DeLorean caused the mails to be used on numerous occasions in connection with legal services provided by Weinberg, Greenberg and their firm.

51. DeLorean and Logan caused the wires to be used on numerous occasions in connection with legal services provided by Morganroth and his firm to them.

52. On several occasions, including during the years 1991 to 1993, Logan's audited financial statements state there is an outstanding balance owed to Morganroth and his firm in the amount of $1,408,689.26 for legal services rendered, which amount still has not been paid.

53. DeLorean and Logan at all times were aware that Morganroth and his firm intended to be compensated for services rendered to DeLorean and Logan.

54. DeLorean and Logan at all times were aware that Morganroth and his firm intended to be reimbursed for expenses they incurred on DeLorean's and Logan's behalf.

55. When Morganroth and his firm rendered legal services to DeLorean and Logan and paid expenses on their behalf, Morganroth and his firm did so with the expectation of being compensated.

56. At the time of the 1987 settlement negotiations with the DMC Bankruptcy Trustee, DeLorean had no ownership interest in Logan and no beneficial rights.

57. At the time of the 1987 settlement negotiations with the DMC Bankruptcy Trustee, Logan was in an irrevocable trust with DeLorean's ex-wife, Cristina, as a trustee.

58. At the time of the 1987 settlement negotiations with the DMC Bankruptcy Trustee, DeLorean's New Jersey Estate had been noticed for foreclosure because of arrearage on mortgage payments.

59. As a result of the 1987 settlement with the DMC Bankruptcy Trustee, DeLorean replaced his ex-wife, Cristina, as the chairman and sole director of Logan.

60. As a result of the 1987 settlement with the DMC Bankruptcy Trustee, the multi-district litigation wherein DeLorean and Logan were defendants in numerous lawsuits

demanding damages in excess of $500 million was dismissed and releases were granted to DeLorean and Logan.

61. In 1987, Judge Woods strongly recommended that DeLorean settle with the DMC Bankruptcy Trustee.

62. Judge Graves also strongly recommended that DeLorean settle with the DMC Bankruptcy Trustee.

63. At the time of the settlement with DSQ in October of 1990, DeLorean's New Jersey Estate had been foreclosed upon and was scheduled for foreclosure sale in late October 1990.

64. The mortgage loan from Merrill Lynch was permitted to close and the foreclosure of DeLorean's New Jersey Estate was stopped and the property redeemed by virtue of the October 1990 settlement which according to its terms permitted same.

65. At the time of the 1990 DSQ settlement, the Cooperative Board of DeLorean's New York Cooperative Apartment had declared DeLorean in default for having placed liens on the proprietary lease, stock, and proceeds of the Cooperative Apartment in violation of restrictive covenants.

66. At the time of the 1987 settlement, the Cooperative Board of DeLorean's New York Cooperative Apartment had declared DeLorean in default for nonpayment of maintenance fees and for violation of the proprietary lease, stock certificate covenants, and agreements for having caused liens to be placed on the Cooperative Apartment and for nonpayment of maintenance fees and charges.

Appendix J

67. Both in 1987 and 1990, the Cooperative Board of DeLorean's New York Cooperative Apartment demanded that DeLorean be evicted.

68. Logan's December 31, 1992 financial statement stated that Logan owed Morganroth and his firm legal fees of $1,408,689.26.

69. DeLorean was sent written Logan reports for several years including 1993 that stated that Logan owed Morganroth and his firm $1,408,609.26.

70. DeLorean wrote in his published book, stated publicly on many occasions, and testified under oath that Weitzman saved DeLorean's life.

71. On October 16, 1990, DeLorean wrote to the American Arbitration Association and stated that he had four attorneys that he had consulted with at the time of the October 11, 1990 settlement.

72. DeLorean told the American Arbitration Association on October 16, 1990 that he had reached an agreement with the British Government to end litigation with them.

73. In 1992, DeLorean attempted to have Arthur Anderson hire Morganroth to defend itself in the action brought against it by the British Government.

74. DeLorean told Morganroth in 1992 that it was important to DeLorean for Arthur Anderson to win their case.

Appendix J

75. Logan's financial statements prepared for and approved by DeLorean in 1992 stated that Morganroth and his firm were owed $1,408,689.26 by Logan.

76. DeLorean requested that Morganroth render advice for DeLorean's benefit in connection with certain tax matters in 1992 through February 2, 1993.

77. DeLorean requested Morganroth to provide assistance to DeLorean's tax attorney, Mr. Elgort, in 1992 through February 2, 1993 for DeLorean's benefit.

78. On August 31, 1990, a summary judgment of foreclosure was rendered by Judge Deannu in New Jersey on DeLorean's New Jersey Estate regarding DeLorean's default under the Saike mortgage on the property.

79. A mortgage foreclosure sale was set for late October 1990 on the DeLorean's New Jersey Estate.

80. On May 6, 1986, DeLorean swore under oath that he was in arrears on his New Jersey Estate mortgage payments and on his New York Cooperative Apartment payments.

81. On May 6, 1986, DeLorean swore under oath that his Detroit civil attorney, C. William Garratt, was owed $222,000.

82. In 1986, DeLorean swore under oath that his attorney, Morganroth, had not been paid one cent.

83. On May 6, 1986, DeLorean swore under oath that his bank balance was under $1,000 and that he had no job, no prospects, and barely enough to pay child support.

Appendix J

84. On October 3, 1990, DeLorean sent a letter through the mail to the American Arbitration Association representing that "I owe Mayer Morganroth $2.2 million which I am unable to pay (he is forced to pay his own expenses to defend me), my California attorney has sued me for $687,000 of unpaid fees, and I am unable to pay the attorney who is defending this action."

85. On September 5, 1990, DeLorean signed a commitment with Lakevue Funding that stated that Morganroth and his firm were owed $2.2 million as of that date by DeLorean.

86. In 1990, DeLorean swore under oath that Morganroth is extremely competent.

87. In January of 1989, DeLorean's New Jersey Estate was appraised at $21,600,000, exclusive of the land and houses.

88. Morganroth and his firm represented Logan in the First Security Bank loans and renewals.

89. Morganroth and his firm represented Logan and DeLorean in the two Merrill Lynch loan transactions.

90. Morganroth and his firm represented DeLorean and Logan in the Saike loan transaction.

91. Morganroth represented Logan in the NAC/Heller loan extension.

92. Judge Woods restrained 834 Fifth Avenue from evicting DeLorean because the result would impair Logan's Court approved settlement and the ability of Logan to perform it.

Appendix J

93. DeLorean's December 31, 1989 financial statement was submitted to Judge Gerald Rosen and to the United States District Court by DeLorean on September 4, 1990, wherein DeLorean indicated his gross assets were $63,525,000.

94. DeLorean's December 31, 1989 financial statement stated that DeLorean's New Jersey Estate was valued at $30,000,000.

95. DeLorean stated that Logan's worth on December 31, 1989, inclusive of the underlying property, to be $18,000,000.

96. DeLorean made a submission to Judge Gerald Rosen that his financial net worth as of December 31, 1989 was $45,555,000.

97. Morganroth rendered legal services to DeLorean regarding the DeLorean Family Trust.

98. DeLorean's New Jersey Estate was purchased by DeLorean pursuant to land contract.

99. During the time period of 1982 through the present, DeLorean and/or Logan possessed, had an interest in, was affiliated or related to the entity or individual on any of the following savings accounts, checking accounts or commercial accounts, and/or was a signatory of such accounts at one time or another during such time period.

A. Account bearing the name of Cristina Corporation at United Nations Bank, New Jersey (Account Number 260 4484);

B. Account bearing the name Ecclesiastes at United Nations Bank, New Jersey (Account Number 260 4977);

C. Account bearing the name DeLorean at United Nations Bank, New Jersey (Account Number 603 9572);

D. Account bearing the name of Logan at United Nations Bank, New Jersey (Account Number 260-4771);

E. Account bearing the name of Logan at Cache Valley Bank;

F. Account bearing the name of Cindy L. Brady/ Cristina DeLorean at Security Savings (Account Number 50312085000584);

G. Account bearing the name of Lamington Estates at United Nations Bank, New Jersey (Account Number 603-682-9);

H. Account bearing the name Lamington Beef at United Nations Bank, New Jersey (Account Number 603-683);

I. Account bearing the name Cristina Holding Corporation at Banker's Trust Company (Account Number 415 579 72);

J. Account bearing the name of DeLorean d/b/a Lamington Beef at Somerset Trust Company;

K. Account bearing the name DeLorean Special Account at Bank of Lafayette; and

Appendix J

L. Account bearing the name or DeLorean at Somerset Trust Company (Account Number 6-94611).

100. DeLorean's December 18, 1991 Personal Financial Statement was prepared by Frank Shaler ("Shaler") pursuant to DeLorean's instructions.

101. DeLorean's December 31, 1990 Personal Financial Statement was prepared by Frank Shaler ("Shaler") pursuant to DeLorean's instructions.

102. DeLorean's November 30, 1990 Personal Financial Statement was prepared by Frank Shaler ("Shaler") pursuant to DeLorean's instructions.

103. DeLorean's September 30, 1990 Personal Financial Statement was prepared by Frank Shaler ("Shaler") pursuant to DeLorean's instructions.

104. On October 25, 1982, DeLorean Motor Cars ("DMC") voluntarily filed for bankruptcy.

105. DeLorean Motor Company Limited ("DMCL") was responsible for manufacturing the DeLorean sports car.

APPENDIX K — PLAINTIFFS' BRIEF IN OPPOSITION DATED JUNE 21, 1993

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 93-CV-70848-DT

Hon. Anna Diggs Taylor

MORGANROTH & MORGANROTH, a Michigan general partnership, and MAYER MORGANROTH,

Plaintiffs,

vs.

JOHN Z. DELOREAN and ECCLESIASTES 9:10-11-12, INC., a Delaware corporation (formerly known as Logan Manufacturing), a Delaware corporation, jointly and severally,

Defendants.

MAYER MORGANROTH (P17966)
In Pro Se and on behalf of
Morganroth & Morganroth
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Appendix K

MARE C. PIERCE (P25946)
PIERCE & PIERCE, P.C.
Attorney for Defendants
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PLAINTIFFS' BRIEF IN OPPOSITION TO MOTION TO DISMISS OR STAY ENTIRE ACTION OR ALTERNATIVELY TO DISMISS COUNT I FROM THE COMPLAINT IN THE INSTANT ACTION FOR FAILURE TO STATE A CLAIM, OR ALTERNATIVELY FOR MORE DEFINITE STATEMENT OF COUNT I OF THE COMPLAINT IN THE INSTANT ACTION

STATEMENT OF FACTS

On October 19, 1982, the nightmare began for John Z. DeLorean ("JZD") when he was busted by federal agents in connection with his acquisition of 220 pounds of pure Columbian cocaine valued at approximately $24,000,000. Shock reverberated across the country as the videotape of JZD's bust was played over and over again on television with the vivid scene of JZD examining the large quantity of cocaine and remarking that the cocaine was "as good as gold." Life would never be the same for the once high flying and flamboyant JZD who had been one of the most captivating forces in the automobile industry and who had been adored by the public. A disgraced JZD not only faced life in prison for major criminal charges, but his fortune and reputation were in grave jeopardy in light of the countless civil lawsuits that were contemplated against him and his affiliated entities. In fact, JZD's horror story

took a turn for the worse on October 25, 1982 when JZD's motivating force, his beloved car company, filed for bankruptcy and the car company's British counterpart, DMCL, faced certain doom while in receivership which had commenced in early 1982.

JZD intended to fight to remain a free man so he shopped for attorneys to represent him in his do or die criminal trial. In November of 1982, JZD was referred to Mayer Morganroth ("Morganroth") in his search for a permanent attorney. JZD consulted with Morganroth and he retained Morganroth to structure a defense and to provide consultation and advice with respect to JZD's criminal cocaine trial and certain other lawsuits contemplated by JZD and his affiliated entities. The defense structured by Morganroth along with his strategy and advice with respect to JZD's criminal cocaine trial were flawlessly implemented by Howard Weitzman and Donald Re who had taken on the trial duties. Miraculously, JZD was acquitted of all charges. Although a free man, JZD's legal troubles and entanglements had just begun.

In mid 1983, a flood of civil cases were filed against JZD, all of which consisted of multiple counts of fraud, embezzlement, breach of fiduciary duties, racketeering activity, and breach of contract allegedly committed by JZD. A myriad of parties sought hundreds of millions of dollars from JZD and in many instances $100,000,000 per count in multiple count lawsuits, most of which were filed in Detroit. In addition, JZD's snow grooming company, Logan Manufacturing Company ("Logan"), whose name was subsequently changed to Ecclesiastes, was joined as a defendant in some of the lawsuits as well. Making matters worse, JZD's wife, Cristina, broke JZD's heart when she filed for divorce, and the board of JZD's prestigious Co-op took

steps to evict JZD. A devastated and emotionally broken JZD turned to Morganroth to provide consultation, advice, and strategy with respect to the multitude of cases, and emotional support with respect to JZD's legal troubles and the loss of the love of his life, Cristina. JZD was so impressed with Morganroth's legal advice that he instructed Morganroth to take over all legal matters for JZD and Logan as of 1985.

Although Morganroth made serious inroads in the civil defense of JZD and Logan and successfully warded off the offensives taken by the plaintiffs in the multitude of cases, JZD suffered a serious blow in 1986 when he was indicted in Detroit for multiple counts of tax fraud and racketeering activity. Again facing serious criminal charges, JZD turned to Morganroth along with Weitzman to save his skin. JZD requested Morganroth to act as co-counsel to structure and quarterback the defense. Again, Morganroth's strategy and defense were successful and this time Morganroth uncovered the key evidence that changed the course of the trial. JZD was acquitted of all charges once again.

Nevertheless, JZD's and Logan's continuing legal troubles and entanglements were so cumbersome and enormous that Morganroth was forced to turn away and reject numerous other clients in order to devote necessary time and energy to solving crisis after crisis for them. In fact, Morganroth worked day and night, during every legal and religious holiday, vacations, weekends, at the office, at home, while driving in his automobile, and even while he was receiving treatment in the hospital in an effort to save JZD and Logan from financial ruin.

In 1987, after battling hundreds of lawyers in case after case, day after day, on JZD's and Logan's behalf, Morganroth negotiated and effectuated a settlement of cases seeking in excess

of $500,000,000 from JZD and Logan, in Detroit for $9,360,000 (which was paid from the assets of Logan) even though JZD's prior $19,000,000 settlement offer (for fewer benefits to JZD) made through previous counsel had been rejected. Morganroth also prevented an effort by the bankruptcy trustee and Cristina DeLorean Thomopolous to settle Ms. Thomopolous' exposure by transferring all of the assets of Logan to the DMC Trustee and completely divesting the DeLorean Family Irrevocable Trust of any interest in Logan. Instead, Morganroth in fact obtained Logan for JZD as part of the settlement despite the fact that JZD had no benefit interest in Logan or any right to its assets. Obtaining sole ownership off Logan for JZD turned out to be JZD's saving grace since he thereafter received benefits from Logan in the approximate amount of $27,000,000, which JZD used to pay off the settlement. In essence, Morganroth effectuated a settlement for JZD where JZD's adversaries paid JZD in excess of $18,000,000 net to dismiss their lawsuits against JZD and Logan, and also provided to JZD $800,000 from another escrow (Bridgewater), and the patents, trademarks, technology, licenses and tax benefits of DeLorean Motor Company, $1,000,000 upon the execution of the settlement, another $1,000,000 upon Logan making its first settlement payment, and a release of the ownership of the plant and land of Logan to him as well.

Morganroth had made great strides in solving JZD's legal troubles and entanglements, however, Morganroth continued to work day and night with respect to the remaining matters which were massive. For instance, Morganroth still was holding off the board of JZD's New York Co-op from evicting JZD. Proceedings had been initiated against JZD, but Morganroth continued to successfully ward off the board's offensive with JZD's $11,500,000 Co-op at stake. In addition, Morganroth

helped negotiate and effectuate multi-million dollar financing for JZD and Logan in order to keep Logan alive and to save JZD's New Jersey estate from foreclosure. Morganroth also successfully resolved several other of JZD's and Logan's matters, including, but not limited to, the Capital Cadillac case, which Morganroth settled for $17,500 wherein Capital Cadillac alleged that JZD defrauded them out of in excess of $1,000,000 by selling cars that JZD did not own. Moreover, Morganroth successfully represented JZD in three IRS audits and in a lawsuit filed by JZD against the IRS with respect to millions off dollars of taxes at issue.

Finally, it appeared as if JZD and Logan were out of the woods. Morganroth devoted more and more time to JZD's and Logan's extensive business, financial, and real estate matters, and as corporate counsel for Logan. In fact, Morganroth helped negotiate and effectuate a royalty and licensing deal with Steven Spielberg and Universal Studios in connection with the use of JZD's name and automobile in the Back To The Future movies and in related merchandise and apparel. Moreover, Morganroth represented JZD and Logan in Detroit in the massive lawsuit filed against the British Receivers and related parties in an effort to recoup monetary losses allegedly suffered by JZD and Logan.

The financial outlook for JZD and Logan appeared to be growing stronger by the day when JZD was hit with yet another potential death knell. Unbeknownst to Morganroth, a $53,000,000 default judgment had been entered against JZD in the United Kingdom in connection with a lawsuit filed by the British Receivers and apparently served on JZD. Unfortunately, JZD did not inform Morganroth of such service since JZD knew that JZD could not defend in the United

Kingdom without being arrested. JZD's ploy backfired when the British Receivers proceeded in Detroit against him and Logan in an effort to enforce the United Kingdom default judgment. Making matters worse, the British Receivers obtained a restraining order against JZD's and Logan's assets which choked off all signs of life of their financial condition. Moreover, the British Receivers badly wanted revenge on JZD since they believed that JZD was getting away with defrauding the British government out of in excess of $100,000,000, in connection with their investment in his car company. The British Receivers mounted and pursued a legal offensive against JZD and Logan of epic proportions. JZD and Logan contended that they could not even pay legal expenses at this time, however, Morganroth battled the British Receivers' extensive legal maneuvers day and night and he appeared to have achieved a major breakthrough when he flew to the United Kingdom and attended and participated in hearings before the High Court of Chancery, at his own expense, which resulted in the *vacatur* of the default judgment against JZD. Thereafter, the British Receivers offered to settle the matter for $2,000,000, but JZD rejected said offer notwithstanding Morganroth's, JZD's British attorneys', Weinberg's, and Kimmerly's recommendations and urgings to accept.

Unfortunately, Morganroth could not obtain fast enough relief in Detroit since one District Court Judge found that JZD had lied about not receiving service of the process in the United Kingdom action and another District Court Judge refused to lift the restraints until the British Receivers' appeal in the United Kingdom of the *vacatur* of the default judgment had been decided. Once again, JZD and Logan were on the brink of financial ruin. Not only was the loss of JZD's New Jersey estate weeks away through foreclosure proceedings, but JZD

contended that he did not have the source of funds to meet his daily living expenses. In addition, Logan could not meet its daily operating expenses and was forced to shut down operations in light of the immediate threat of liquidation. Facing imminent financial ruin, JZD and Logan begged Morganroth to effectuate a settlement with DSQ. Accordingly, Morganroth negotiated a settlement of the $53,000,000 default judgment (which had become approximately $70,000,000 with interest) for a $7,000,000 payment plan. As part of said settlement, JZD also was released by the United Kingdom and Ireland in connection with civil fraud and conspiracy claims involving JZD, Fred Bushell, and others regarding kickbacks on invoices paid to Lotus Car Company in the approximate amount of $12,500,000 which was misappropriated, and the $8,500,000 missing from GPD. Said release turned out to be another coup for JZD since Bushell eventually pled guilty to the criminal charges of fraud and having conspired with JZD after United Kingdom law enforcement officials raided his apartment and discovered documents which supported the charges and implicated JZD. Bushell was sentenced to four years in jail, fined 2,000,000 British Pounds, and the civil case which had been instituted by the United Kingdom against Bushell and JZD (Morganroth obtained a dismissal for JZD by virtue of the settlement with DSQ) currently is pending against Bushell. Although JZD and Logan were released from the civil actions, a criminal warrant was issued by the United Kingdom in 1992 for the arrest of JZD and the British Judge who issued the criminal indictment stated that JZD's conduct warranted a ten year prison sentence.

The DSQ settlement provided JZD and Logan with the possibility of resuscitating their suffocating financial condition. Morganroth was put to the task of negotiating and effectuating financing on behalf of JZD and Logan so that the operations of

Logan could be reopened and JZD's New Jersey estate could be redeemed from foreclosure (the DSQ settlement temporarily enabled JZD to stave off the loss of his estate through short term interim financing previously effectuated by Morganroth). Unfortunately, Morganroth's tireless efforts proved unsuccessful since very few lenders wanted anything to do with JZD given the chaotic mess that he created with respect to his car venture. With time running out, JZD shifted course and put Logan up for sale since Logan easily could obtain funding if JZD was not associated with the company. Morganroth negotiated deal after deal for the sale of Logan, all of which fell apart as a result of JZD's constant alteration of the conditions of sale. With the pressure mounting and time running out, DeLorean shifted course again and placed his New York Co-op up for sale. A lucrative deal was agreed to in principle with Reginald Lewis for approximately $11,500,000, exclusive of furnishings, however, JZD again constantly altered conditions of the sale until Lewis lost all patience and the deal fell apart. Morganroth singlehandedly revived the deal through persistent negotiation with counsel for Lewis and the sale took place in or about August 1992. JZD then used the proceeds from the sale to satisfy the DSQ settlement and to infuse desperately needed capital into Logan so that Logan would not die. Meanwhile, Morganroth recently learned that JZD secretly auctioned off the furnishings of the New York Co-op and pocketed approximately $3,000,000.

Next, JZD concentrated his efforts on redeeming his New Jersey estate from foreclosure since the loss of the estate again was imminent. Morganroth tirelessly pursued and attempted to negotiate financing for JZD, however, JZD would not consider paying the high rates that the few interested lenders demanded. Instead, JZD again placed Logan up for sale. After extensive

negotiation by Morganroth, one of the prior agreements in principle which had been aborted was revived. Daily negotiation, drafting and review of documents by Morganroth were performed, however, JZD once again caused the deal to fall apart with his constant alteration of the conditions of sale. Again, Morganroth came to the rescue and revived the transaction. On or about January 5, 1993, the sale of Logan was consummated for approximately $16,500,000, and JZD was able to save his New Jersey estate.

Against great odds, Morganroth had achieved the impossible. After in excess of ten years of day and night monumental legal battles, Morganroth cleaned the slate for JZD and Logan. JZD not only was a free man, but he walked away from his massive legal troubles with unbelievable wealth. In addition, Logan not only was preserved, but the assets of Logan were sold to new owners who brought stability to the operations. As of January 1993, JZD had a net worth of approximately $40,000,000 when in fact his net worth in October of 1984 was assessed by JZD as more than a negative $23,000,000 and at that time he was without earnings and essentially bankrupt. The story, however, did not end happily since Morganroth soon learned that JZD and Logan had conned and defrauded Morganroth out of enormous legal fees and expenses as part of a continuing plan of racketeering activity.

Throughout Morganroth's legal representation of JZD and Logan, JZD and Logan agreed and promised to pay all expenses and attorney fees to Morganroth upon Morganroth's customary rates. JZD and Logan paid Morganroth partial payments of the legal fees and expenses rendered by Morganroth, however, for substantially all of the time throughout Morganroth's legal representation, JZD and Logan had contended that they

experienced extreme financial difficulties, including, but not limited to, court ordered restraining orders which encumbered their assets. Although JZD and Logan represented that their immediate ability to pay attorney fees and expenses routinely was impeded by financial constraints, JZD and Logan repeatedly represented, assured, and warranted throughout Morganroth's legal representation of them that all amounts incurred would be paid in full when monies, assets, and/or properties became available or unrestrained. Relying on such representations, Morganroth performed legal services and incurred expenses on their behalf.

Although JZD and Logan continued to sporadically make partial payments to Morganroth for legal services rendered, the past due and outstanding fees and expenses mounted. In fact, Morganroth was required to pay virtually all expenses associated with legal representation of JZD and Logan. As the past due legal fees and expenses substantially grew, Morganroth became uncomfortable with the amount of the outstanding balance. Consequently, Morganroth repeatedly inquired, requested, and demanded that JZD and Logan satisfy the outstanding legal fees and expenses. JZD and Logan always set Morganroth at ease and made Morganroth more comfortable with the situation by way of a fraudulent con job. JZD and Logan continually acknowledged and certified the amounts past due and owing to Morganroth, and represented, assured, and warranted that all amounts incurred would be satisfied as soon as monies, assets, and/or properties became available or unrestrained. JZD's and Logan's representations, certifications, and assurances not only were made to Morganroth orally and in writing, but in testimony, sworn affidavits, letters, financial statements, and other documents. At the same time, JZD and Logan repeatedly pleaded with Morganroth to continue rendering; legal representation

since JZD and Logan could not survive without Morganroth. In addition, JZD and Logan constantly referred to Morganroth as the best attorney in the country and they referred high profile clients to Morganroth. Although JZD and Logan successfully convinced Morganroth that they had honorable intentions and would perform their obligations, JZD and Logan had no intention of doing so. Instead, JZD and Logan planned to string Morganroth along until their massive legal troubles and entanglements were resolved and then leave Morganroth high and dry. Unbeknownst to Morganroth, JZD and Logan had fraudulently diverted $8,500,000 in connection with the DRLP Scheme (Complaint, Section 43(A) at 16) and approximately $12,500,000 in connection with the DMCL Scheme (Complaint, Section 43(B) at 16), and JZD and Logan continually defrauded Morganroth and others in order to hide their fraudulent diversion of such monies and keep said monies intact. For instance, JZD and Logan not only defrauded the creditors of Logan and DMC in connection with the Creditors Scheme (Complaint, Section 43(D) at 19), but they defrauded their legal saviors, such as Morganroth as delineated above, Howard Weitzman who was JZD's trial attorney in both criminal trials (Complaint, Section 43(E) at 19), and Thomas Kimmerly who was general counsel and tax counsel to JZD and Logan from 1979 through 1992 (Complaint, Section 43(H) at 21) in order to hide their fraudulent diversion of monies and keep said monies intact.

Eventually, Morganroth had resolved case after case and matter after matter until it became apparent in late 1992 that monies, assets, and/or properties were available and/or unrestrained, and that JZD and Logan would have the opportunity and capacity to satisfy the substantial legal fees and expenses past due and owing which were fast approaching $4,000,000. Accordingly, Morganroth inquired, requested, and

demanded on numerous occasions in August 1992 that the entire outstanding balance be satisfied in connection with the sale of JZD's New York Co-op. JZD and Logan represented that they could not satisfy any portion of the outstanding balance out of the proceeds of said closing since such funds were required to satisfy the DSQ settlement and to immediately infuse monies into Logan for operational capital until Logan's sale could be closed in order to maintain the viability of Logan which was in jeopardy. Furthermore, JZD and Logan represented, warranted, and assured that Morganroth would be paid in full as a result of the Logan sale, and they again acknowledged and certified the amount past due and owing to Morganroth. Based on the foregoing, Morganroth allowed the closing of the sale of JZD's Co-op to take place and indeed closed the sale for JZD.

As the Logan sale appeared imminent, Morganroth continually discussed with JZD and Logan the outstanding balance, and JZD and Logan repeatedly represented, warranted, and assured Morganroth that said legal fees and expenses would be satisfied prior to the end of January 1993. Although the closing of the Logan sale was to take place on or about January 5, 1993, JZD and Logan represented that monies could not be disbursed until the end of January due to tax considerations. The Logan sale, in fact, was consummated on January 5, 1993, and JZD continued to represent, warrant, and assure Morganroth throughout January 1993 that the legal fees and expenses would be fully paid prior to the end of January. Unbeknownst to Morganroth, at the same time as JZD and Logan were making the aforementioned representations. JZD and Logan were plotting with attorney Ed Friedberg to institute a frivolous malpractice claim against Morganroth in order to attempt to defuse any action that Morganroth might file when January ended and the legal fees and expenses were not satisfied.

Appendix K

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II. THIS HONORABLE COST SHOULD NOT STRIKE PLAINTIFFS' RICO CLAIM (COUNT I).

Although Defendants contend that Plaintiffs' RICO claim should be stricken pursuant to Fed. R. Civ. P. 12(b)(6), Defendants have not and cannot articulate any basis for doing so or satisfy their substantial burden.

A. *The Complaint Sufficiently Identifies or Defines the RICO* "Enterprise."

Defendants disingenuously argue that Plaintiffs have neglected to identify or define the RICO enterprise. Defendants carry forward their erroneous argument to create a domino effect and contend that because Plaintiffs purportedly failed to identify or define the RICO enterprise, Plaintiffs' Complaint also fails to plead a violation of § 1962 and fails to plead facts showing Plaintiffs' injuries were caused by a violation of §1962. Defendants' contentions are without merit since Plaintiffs identified and/or defined the RICO enterprise in the Complaint.

The RICO statute defines an "enterprise" in 18 U.S.C. §1961(4) as follows:

> Enterprise includes any individual, partnership, corporation, association or other legal activity, and any union or group of individuals associated in fact although not a legal entity.

The aforementioned definition of an enterprise has been repeatedly reaffirmed in a vast body of case law. *See, e.g., United States* v. *Turkette*, 452 U.S. 576, 582 (1981).

Appendix K

In the case at bar, Plaintiffs' Complaint identifies and defines the RICO enterprise as an association in fact by and between JZD, Logan, and others. *See, e.g.*, Complaint at para 38-39, 51, 60. First, Plaintiffs' Complaint alleges the existence of an enterprise within the meaning of §1961(4) by stating that the Defendants (JZD and Logan) "have been and are employed and/or associated with each other and others in a partnership, corporation, and/or association in fact which formed and comprised an enterprise as defined in 18 U.S.C. §1961-1965 *et seq.*" Complaint at para 38. Next, Plaintiffs' Complaint not only specifies that the enterprise is an association in fact, but also provides additional particularity by stating that the enterprise, consisting of JZD, Logan, and others, "comprised formal or informal associations in fact that functioned as continuing units over time through a hierarchial or consensual decision-making structure." Complaint at para 39. In fact, Plaintiffs' Complaint provides even greater specificity by alleging that JZD currently exercises the day to day management and operation of the aforementioned association in fact (Complaint at para 40), that the enterprise was formed in 1978 and has continued through the date of the Complaint (Complaint at para 60), that the enterprise has engaged, participated, and involved itself in the activities which affect interstate or foreign commerce (Complaint at para 51, 55, 57-58), and that JZD and Logan used, invested, and directed the proceeds from their pattern of racketeering activity in order to establish, operate, maintain, and acquire an interest in the enterprises (Complaint at para 53-54, 57).

Undoubtedly, Plaintiffs have more than adequately identified and defined the enterprise. It is well settled that the definition of a RICO enterprise under 18 U.S.C. §1961(4) includes an "association in fact" and that "proof of association with a RICO enterprise may depend wholly on circumstantial

evidence. *United States* v. *Hughes*, 895 F.2d 1135, 1142 (6th Cir. 1990); *United States* v. *Thevis*, 665 F.2d 616, 625 (5th Cir. 1982). Plaintiffs' Complaint sets forth with great specificity more than adequate facts to provide circumstantial evidence of JZD's and Logan's association in fact. Complaint at para 11-61. Moreover, the association in fact formed by JZD, Logan, and others on its face is distinct and separate from the defendant/ person, since the association in fact" as an entity is not a defendant in the case at bar. *See, Haroco* v. *American National Bank and Trust Co. of Chicago*, 747 F.2d 384, 401 (7th Cir. 1984); *Cullen* v. *Margiotta*, 811 F.2d 698, 729-730 (2nd Cir. 1987). Furthermore, Defendants' inquiry as to the identity of the "other" members of the enterprise is a red herring. Plaintiffs have referenced unnamed others as being members of the enterprise since affiliates and representatives of JZD and Logan also combined with JZD and Logan to form the association in fact referred to as the enterprise in the Complaint. The fact that not all of the affiliates and representatives were specifically named in the Complaint does not render the Complaint deficient since the Complaint even is sustainable had Plaintiffs merely alleged that JZD and Logan alone combined to form the association in fact referred to as the enterprise. Although Defendants easily could obtain information regarding the unnamed others (who are not defendants) through discovery, Plaintiffs state that the others include, but are not limited to, such affiliates and representatives as Cristina Corporation, Cristina Holding Corporation, Fred Bushell, Colin Chapman, GPD, and Roy Nesseth. In any event, by virtue of the fact that Plaintiffs' Complaint sufficiently identifies and defines the RICO enterprise, the other arguments raised by Defendants (that Plaintiffs' Complaint fails to plead a violation of §1962 and fails to plead facts showing Plaintiffs' injuries were caused by violation of §1962) are meritless and naturally fail since said

arguments merely were based upon the faulty premise that no enterprise was alleged.

B. *Plaintiffs' Complaint Adequately Alleges the Requisite Racketeering Activity Predicate Acts.*

It is abundantly clear that Plaintiffs' Complaint alleges that Defendants committed the following five different types of predicate acts as defined in 18 U.S.C. §1961(1): (1) Violation of 18 U.S.C. §1341 (Complaint at para 46A); (2) Violation of 18 U.S.C. §1343 (Complaint at para 46B); (3) Violation of 18 U.S.C. §1952 (Complaint at para 46C); (4) Violation of 18 U.S.C. §1956 (Complaint at para 46E); and (5) Violation of 18 U.S.C. §1957 (Complaint at 46F). *See*, 18 U.S.C. §1961(1). In addition, the allegations of the aforementioned predicate acts are set forth with great specificity in Plaintiffs' Complaint. In fact, the allegations regarding the predicate acts contained in paragraphs 46A, 46B, 46C, 46E, 46F are supported by detailed facts delineated in the first 25 pages of the Complaint.

Throughout the first 25 pages of the Complaint, Plaintiffs specify the dates, misrepresentations, occurrences, events, intent, parties involved, reliance, knowledge, and damages in particular detail that support Defendants' acts of mail fraud and acts of wire fraud. In addition, in paragraph 46A of the Complaint, Plaintiffs further specify ten instances of Defendants, use of the mails in violation of 18 U.S.C. §1343 along with dates, substance of mailings and identification of parties, and in paragraph 46B of the Complaint, Plaintiffs further specify 33 instances of Defendants' use of the wires in violation of 18 U.S.C. §1343 along with dates, substance of telefaxes and telephone conversations, and identification of the parties. The factual details specified in the Complaint with respect to the

aforementioned fraudulent misconduct more than satisfy the pleading requirements of Fed. R. Civ. P. 9(b). Rule 9(b) is read in conjunction with Fed. R. Civ. P. 8(a) and therefore, Rule 9(b) takes into account the general simplicity and flexibility contemplated by the Rules. *E.g., In Re: Langhorn Securities Litigation*, 573 F. Supp. 278 (W.D. Okla. 1983); *Clark* v. *Cameron-Brown Co.*, 72 F.R.D. 98 (W.D.N.C. 1976); 5 Wright & Miller, Federal Practice and Procedure, §1298 (1969). In keeping with the overall intent of the Rules, Rule 9(b) does not impose a rigorous burden of pleading on a plaintiff and does not require a plaintiff to plead every element of fraud; rather, a plaintiff merely must set forth facts with sufficient particularity to apprise defendants of the charges against them. *See*, *Decker* v. *Massey-Ferguson, Ltd.*, 681 F.2d 111 (2nd Cir. 1982); *Blascoechea* v. *Sveredrup & Parcel & Assoc.*, 486 F. Supp. 169 (E.D. Pa. 1980); *Temple* v. *Haft*, 73 F.R.D. 49 (D.C. Del. 1976). Moreover, it has been widely recognized that nothing in Rule 9(b) requires rigid exactitude such as requiring the specification of the precise words used so long as the nature and subject of the fraud are described. *See*, *Seville Industrial Machinery Cord.* v. *Southmost Machinery Cord.*, 742 F.2d 786, 791 (3rd Cir. 1984), *cert den.*, 469 U.S. 111 (1985); *Pandich, Inc.* v. *Rooney*, 632 F. Supp. 1430, 1436 (W.D. Ill. 1986); *Accord, Meade* v. *Weber*, 647 F. Supp. 954, 956 (E.D. La. 1986). Finally, Rule 9(b) is even further relaxed where matters are peculiarly within the adverse parties' knowledge such as is the case here. *See, Odette* v. *Sheavon Hammell & Co.*, 394 F. Supp. 946 (S.D.N.Y. 1975). Here, further particularity would serve no purpose other than to create an extremely lengthy and cumbersome complaint in light of the fact that Plaintiffs have more than satisfied the pleading requirements of Rule 9(b).

Moreover, Plaintiffs also delineate the dates, unlawful activity, occurrences, events, intent, misrepresentations,

knowledge, parties involved, and damages that support Defendants' violation of 18 U.S.C. §1952 (false pretenses) and violation of 18 U.S.C. §1957 (unlawful monetary transactions). In fact, all of paragraph 43 of the Complaint provides more than sufficient detail of the factual bases supporting said predicate acts so as to satisfy the notice pleading requirements of Rule 8(a) which are applicable (Rule 9(b) inapplicable).

Furthermore, Plaintiffs also provide specific details of the factual bases supporting Defendants' violation of 18 U.S.C. §1956 (laundering of monetary instruments) in paragraph 43(C) of the Complaint so as to satisfy the notice pleading requirements of Rule 8(a) which are applicable (Rule 9(b) inapplicable).

C. *Plaintiffs' Complaint Adequately Alleges the Requisite "Pattern" of Racketeering Activity.*

Defendants' argument that Plaintiffs' Complaint does not adequately plead the requisite "patterns of racketeering activity lacks merit in law and in fact.

It is well established that the "pattern" requirement set forth in 18 U.S.C. §1961(5) is comprised of the following elements: (1) that the predicate acts are related, and (2) that they amount to or pose a threat of continued activity. *See, Seduce* v. *Imrex Co.*, 473 U.S. 479, 496 (1985); *H.J. Inc.* v. *Northwestern Bell*, 492 U.S. 229, 239-243 (1989).

First, Plaintiffs' Complaint more than adequately satisfies the element of relatedness. The element of relatedness is defined in terms of the relationship of the Defendants' racketeering acts to one another such that they have "the same or similar purposes, results, participants, victims or methods of commission, or

otherwise are interrelated by distinguishing characteristics and are not isolated events." *H.J. Inc.*, 492 U.S. at 239-140. The racketeering activity alleged in Plaintiffs' Complaint fits squarely within said definition. Plaintiffs allege that the pattern of racketeering activity committed by Defendants includes, but is not limited to, ten schemes to defraud that are delineated in the Complaint in paragraph 43. All of the aforementioned schemes consisted of the same or similar purposes, results, participants, methods of commission, and were otherwise interrelated and were not isolated events.

For instance, Defendants' racketeering activity commenced in 1979 with the DRLP Scheme. The purpose of the DRLP Scheme was for Defendants to unlawfully convert for their own use $8,500,000 raised from the limited partnership known as DRLP. Defendants accomplished their illicit objective through the commission of mail fraud, wire fraud, and violation of 18 U.S.C. §1952 and §1957 when raising funds for the research and development of the DeLorean sports car and the ERM plastic process, which was supposed to provide the partners in DRLP with tax deductions. Instead, Defendants unlawfully diverted said funds for their use in order to remove encumbrances on their own property, to satisfy their personal obligations, and to obtain additional assets.

In connection therewith, Defendants also used the same unlawful means to perpetrate the DMCL Scheme. Defendants defrauded DMCL (the entity manufacturing the DeLorean sports car) through the commission of mail fraud, wire fraud, and violation of 18 U.S.C. §1952 and §1957 by fraudulently misrepresenting that the funds raised through the DRLP private placement would only satisfy a portion of the contract with the entities responsible for engineering and developing the

DeLorean sports car when in fact such contract was approximately $12,634,000 less than the money raised. Defendants caused DMCL to overpay by $12,634,000 and Defendants diverted said funds for their personal benefit for the same purposes as in the DRLP Scheme.

Thereafter, in 1982, the DeLorean car company plant was put into receivership and was facing permanent shutdown. Defendants desperately wanted to bring the company out of receivership in order to fulfill JZD's dream and in order to hide their unlawful diversion of funds in connection with the DRLP Scheme and the DMCL Scheme. The receivers already had begun scrutinizing the company's documentation and discovery of the aforementioned schemes was imminent. Accordingly, Defendants attempted to defraud the Mafia out of $10,000,000 in laundered money in order to bring the company out of receivership and thereby hide their unlawful conduct. Defendants implemented the Eureka Federal Savings and Loan Scheme, and in so doing, Defendants again committed mail fraud, wire fraud, violated 18 U.S.C. §1952 and §1957, and even violated 18 U.S.C. §1956 as a result of the money laundering.

In the meantime, a tremendous amount of litigation had commenced involving Defendants. Not only did DeLorean face criminal charges with respect to the DRLP Scheme, the DMCL Scheme and the Eureka Federal Savings and Loan Scheme, but DeLorean and Logan faced a multitude of civil cases arising out of the DRLP Scheme and the DMCL Scheme. Defendants attempted to avoid responsibility for the DRLP Scheme and DMCL Scheme by perpetrating the Creditors Scheme in 1984. Defendants figured that they could shield evidence of their prior unlawful conduct by purchasing Logan's assets through an

affiliate but fraudulently misrepresenting that the sale was to an independent company and at arm's length. Although Defendants' plan was unsuccessful, Defendants again committed mail fraud, wire fraud, and violated 18 U.S.C. §1952 and §1957.

Moreover, from 1982 through the present, Defendants hired several attorneys to defend them in criminal and civil cases arising out of the aforementioned schemes, however, Defendants continued their racketeering activity against their attorneys by defrauding them out of legal frees and expenses so that Defendants could retain the funds obtained through the DRLP Scheme and DMCL Scheme. Defendants committed the predicate acts of mail fraud, wire fraud, and violation of 18 U.S.C. §1952 and §1957 in the schemes perpetrated against their attorneys. *See*, Complaint at para 43E-J.

Clearly, Plaintiffs' Complaint more than adequately satisfies the element of relatedness since "the actions alleged are neither isolated acts of racketeering activity nor a single criminal activity divided up into component parts." *Silverman* v. *Niswonger*, 761 F. Supp. 464, 471 (E.D. Mich. 1991), *citing, Robinson* v. *Kidder, Peabody & Co.*, 674 F. Supp 243, 246 (E.D. Mich. 1987). In fact, Plaintiffs' Complaint satisfies the element of relatedness merely by virtue of the allegations set forth in the Mayer Morganroth and Morganroth & Morganroth Scheme. *See*, *BCBS* v. *Kamin*, 876 F.2d 543, 544-545 (6th Cir. 1989).

Second, Plaintiffs' Complaint more than adequately satisfies the element of continuity. The Supreme Court explained that "continuity" is

> a closed and open-ended concept, referring either to a closed period of repeated conduct, or to past

> conduct that by its nature projects into the future with a threat of repetition. *H.J. Inc.*, 492 U.S. at 241. *See also, United States* v. *Busacca*, 936 F.2d 232, 237 (6th Cir. 1991)

The continuity element is satisfied where the predicate acts extend over a substantial period of time or can be attributed to a defendant operating as part of a long term association that exists for unlawful purposes or by its very nature projects into the future with a threat of repetition. *Id.* at 242-243. Here, Plaintiffs' Complaint satisfies both the closed and open-ended concept (even though satisfaction of one suffices) since Plaintiffs' Complaint delineates a closed period of repeated conduct spanning over 13 years (1979 through February 1993), which also by its very nature projects into the future with a threat of repetition. In fact, Defendants' racketeering activity perpetrated against the Plaintiffs alone continued for a substantial period and satisfies the continuity requirement without reference to any other racketeering activity alleged in the Complaint.

D. *No Greater Specificity is Needed.*

Plaintiffs' Complaint provides far greater specificity than is required under Rules 8(a) and 9(b). Nevertheless, in the event that this Honorable Court determines that additional pleading is necessary, Plaintiffs should be provided the opportunity to amend their Complaint pursuant to Fed. R. Civ. P. 15. It is well settled that leave to amend shall be freely given so that an action is decided on the merits. *See, Foman* v. *Davis*, 371 U.S. 178, 182 (1962); *United States* v. *Hougham*, 364 U.S. 310 (1960); *Gillespee, Administratrix* v. *United States Steel Cord.*, 379 U.S. 148 (1964); *Conley* v. *Gibson*, 355 U.S. 41 (1957).

Appendix K

CONCLUSION

For all of the foregoing reasons, Plaintiffs respectfully request this Honorable Court to deny the instant Motion, and to awards costs and attorney fees so wrongfully incurred by Plaintiffs in connection herewith.

Respectfully submitted,

By s/ Mayer Morganroth
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Dated: June 21, 1993

APPENDIX L — PLAINTIFFS' COMBINED BRIEF IN OPPOSITION DATED FEBRUARY 14, 1994

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

* * *

PLAINTIFFS' COMBINED BRIEF IN OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST COUNT I AND MOTIONS FOR JUDGMENT ON THE PLEADING AGAINST COUNT I AND II

* * *

PRELIMINARY STATEMENT

Defendants filed three Motions, on or about December 20, 1993, seeking to dismiss Plaintiffs' RICO claim (Count I) and Fraud claim (Count II). In support of the Motions, Defendants submitted 71 pages in briefs arguing that (1) the RICO and Fraud claims should be dismissed since Defendants are former clients of Plaintiffs, and that (2) the RICO claim also should be dismissed on the additional ground that there is no evidence to support the RICO allegations. We submit this Brief to respond to the meritless arguments raised by Defendants in their three Motions.

Defendants mistakenly argue that Plaintiffs' RICO and fraud claims improperly utilize Defendants' "confidences" and "secrets." But Defendants fail to identify *any* such confidences or secrets, apparently believing that the entire subject matter of DeLorean's repeated and well-documented frauds are somehow magically transformed into "confidences" and "secrets" merely

because there was an attorney-client relationship between Plaintiffs and Defendants when some of DeLorean's fraudulent conduct occurred. This is clearly not the law. As important, the evidence that will be used at trial to support Plaintiff's RICO and fraud claims is either a matter of public record or was acquired through discovery in this action, *after* the termination of the attorney-client relationship. In any event, it is settled law that attorneys are permitted to use confidences and secrets in suits to collect their fees owed and to defend themselves against allegations of malpractice, and Defendants cite no cases holding that once the client has opened the door to secrets and confidences by bringing a malpractice charge, the attorney who was wrongfully deprived of his fees is confined to a particular form of action, such as breach of contract, and may not pursue other legitimate avenues of recovery, such as fraud, as well.

Moreover, Defendants' contention that no evidence supports the RICO allegations is baseless. Defendants' Motion should be denied since more than sufficient evidence exists to establish a genuine issue of material fact with respect to the RICO allegations. Fed. R. Civ. P. 56; *Celotex Corp.* v. *Catrett*, 477 U.S. 317, 322-323 (1986). In considering Defendants' contention, the Court must view the facts and all inferences to be drawn in the light most favorable to the Plaintiffs. *Matsushita Elec. Indus. Co.* v. *Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *60 Ivy St. Corp.* v. *Alexander*, 822 F.2d 1432, 1435 (6th Cir. 1987). Review of the evidence makes clear that Defendants have not and cannot sustain their burden of showing conclusively that no genuine issue of material fact exists. *60 Ivy St. Corp.*, 822 F.2d at 1435; *Smith* v. *Hudson*, 600 F.2d 60, 63 (6th Cir. 1979). In fact, instead of addressing the abundant factual evidence, Defendants use the bulk of their briefs to reargue their prior contention that Plaintiffs have not

sufficiently *pled* the RICO claim. Plaintiffs need not address Defendants' attempt to reargue the sufficiency of the RICO pleading since those arguments already have been rejected by this Honorable Court in its July 30, 1993 Order. Affirmation of Jeffrey B. Morganroth ("JM Aff"), Exh 1. It is, therefore, the law of the case that Plaintiffs sufficiently have pled a RICO claim against Defendants.[1]

STATEMENT OF FACTS

This is a case about the dark side of the "American Dream." Key participants in John Z. DeLorean's ("DeLorean") revolutionary car company secretly formed a criminal network for the purpose of obtaining money and property through illicit activities. While the unsuspecting public thought they were supporting and assisting the legitimate operations of the car company that had captured the hearts and minds of the mass public, they in reality were ensnared in a trap set by the criminal

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1. Defendants argued in their May 5, 1993 Motion to Dismiss Plaintiffs' RICO claim or alternatively for a more definite statement that (1) Plaintiffs purportedly failed to adequately plead or identify the enterprise; (2) Plaintiffs purportedly did not satisfy the requirement of distinction between the person and the enterprise; (3) Plaintiffs purportedly did not sufficiently plead a violation of 18 U.S.C. §1962(a), (b), (c) or (d); (4) Plaintiffs purportedly did not sufficiently plead facts showing that Plaintiffs' injuries were caused by a violation of 18 U.S.C. §1962; (5) Plaintiffs purportedly did nor sufficiently plead the requisite pattern of racketeering activity because of the supposed lack of continuity and relatedness; and (6) Plaintiffs purportedly attempted to plead a RICO claim to cover a situation that RICO was not intended to cover. Notwithstanding this Honorable Court's July 30, 1993 Order rejecting all of these arguments, Defendants raise the identical arguments in connection with the instant Motions.

network to steal their money and acquire property through illegal and fraudulent schemes. Ultimately, the car company failed because the criminal network illegally and fraudulently diverted funds to line its own pocket that were intended and necessary for the operation of the car company. When the members of the criminal network could no longer forestall allegations of fraud and litigation in connection with the failed car company, they hired unsuspecting attorneys. The unsuspecting attorneys thought they were defending the legitimate business operations of the failed car company based upon the facts and documents provided to them. In reality, however, the criminal network had hired the attorneys in an attempt to stave off discovery of the illicit activities, to defend them from allegations of wrongdoing, and to protect their ill-gotten gains. Making matters worse, the criminal network fraudulently induced the attorneys to perform legal services in reliance upon false promises to pay legal fees and expenses so that they could keep their ill-gotten gains intact.

The criminal network was formed as an association in fact enterprise, as that term is defined in 18 U.S.C. §1961(4), in or about 1978. The enterprise initially consisted of at least the following members: DeLorean, Ecclesiastes 9:10-11-12, Inc. (then known as Logan Manufacturing Co., hereinafter referred to as "Logan"), Cristina Corporation, Cristina Holdings Corporation, Colin Chapman ("Chapman"), Fred Bushell ("Bushell"), GPD, and Roy Nesseth ("Nesseth"). Later, others such as Edward Freidberg and Freidberg Law Corporation (collectively referred to as "Freidberg"), joined the enterprise and participated in various schemes to defraud.

The first scheme to defraud that the enterprise engaged in was the DRLP Scheme. DeLorean Research Limited Partnership

("DRLP") was a limited partnership formed in 1979 for the purpose of overseeing the research and development of the DeLorean sports car. The members of the enterprise concocted a scheme to defraud DRLP and its partners by causing DRLP to enter into a bogus contract with GPD to perform the research and development. JM Aff, Exh 2; Exh 3 at 46-48, 51-52. GPD was a Panamanian shell corporation established and controlled by Chapman and Bushell that supposedly was the agent of Lotus Cars Limited ("Lotus"') and would subcontract the work to Lotus. JM Aff, Exh 4 at 182-184; Exh 5 at 25-30. The contract called for DRLP to provide approximately $17.8 million to satisfy GPD's fee and the cost of the research and development. A private placement memorandum was prepared by members of the enterprise and presented to DRLP and its partners for the supposed purpose of soliciting and raising such funds. $8.5 million of the money raised pursuant to the private placement memorandum was secretly diverted by members of the enterprise through an escrow agreement and a complex series of back to back bank transactions. JM Aff, Exh 3 at 51-52, 134-145; Exh 6. Another $4 million of said monies went directly into the personal accounts of Chapman and Bushell. JM Aff, Exh 3 at 141. The $8.5 million, which had become approximately $9.4 million with interest,[2] eventually arrived in the United States and was used to pay off loans which had been borrowed to acquire Logan from Thiokol Corporation in 1978, and to purchase jewelry and other investments for DeLorean and Cristina Holdings Corporation. JM Aff, Exh 3 at 145-152, 155-156; Exh 7; Exh 5 at 47. In order to further hide the trail of said funds, Logan then executed a promissory note in favor

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2. $8.9 million of these funds were funneled into the United States. The $500,000 balance was used to satisfy fees and costs incurred in connection with washing the funds through the laundering mechanism. JM Aff, Exh 3 at 139.

of Cristina Corporation, which was its parent corporation and wholly owned by DeLorean. *Id.* Cristina Corporation, in turn, executed a promissory note in favor of DeLorean. *Id.*

At or about the same time as the enterprise was perpetrating the DRLP Scheme, the enterprise also was perpetrating the DMCL Scheme. DeLorean Motor Company Limited ("DMCL") was responsible for coordinating the manufacture of the DeLorean sports car. The members of the enterprise caused DMCL to enter into a bogus contract with Lotus to manufacture the prototype of the DeLorean sports car. JM Aff, Exh 2; Exh 4 at 182-183. Chapman was chairman and the controlling shareholder of Lotus, and Bushell was its finance director. *Id.* The members of the enterprise misrepresented to DMCL that DRLP's $17.8 million contract with GPD for the research and development of the DeLorean sports car only would satisfy a portion of the manufacture of the prototype even though the members of the enterprise knew that the actual and true contract with GPD and Lotus was for only $10.5 million and that the true contract price would fully cover the entire cost of the research, development, and manufacture of the prototype. The members of the enterprise thereafter caused phony invoices to be submitted to DMCL in the approximate amount of $12.6 million for the additional costs supposedly not covered by the DRLP contract. *Id.* The members of the enterprise fraudulently diverted the invoiced amounts for their own use. *Id. See also*, JM Aff, Exh 3 at 103-104, 111-115. Chapman, Bushell, and DeLorean all received proceeds from this scheme after the enterprise's expenses were satisfied. JM Aff, Exh 2.

By 1982, DMCL had been placed in receivership because it lacked the necessary capital to operate as a result of the fraudulent diversion of funds in connection with the DRLP

and DMCL Schemes. Had the members of the enterprise not stolen and diverted the funds, then DMCL would not have been placed in receivership. Members of the enterprise attempted to raise financing to be used for the purpose or reopening the DMCL plant in Ireland and eliminating the receivership altogether. The members of the enterprise desired to accomplish this objective so that they could continue to derive money and property through illicit activities and because they were becoming concerned that the illicit activities already perpetrated would be discovered by the receivers. Accordingly, members of the enterprise devised a scheme to raise money unlawfully from Eureka Federal Savings & Loan ("Eureka").

The members of the enterprise conspired to defraud Eureka and its principals out of substantial monies by attempting to cause Eureka and its principals (believed to be Mafia by DeLorean) to provide $10 million to the enterprise for the supposed purpose of reopening the DMCL plant in exchange for all of the capital stock of DMCI, which stock supposedly represented ownership interest in the DeLorean car company. JM Aff, Exh 8; Exh 4 at 170-176. In reality, DMCI was a shell corporation with no assets that had been formed by the members of the enterprise with the intent of transferring all of the valueless stock to Eureka and its principals in exchange for the funds. *Id.* In the summer and fall of 1982, members of the enterprise in fact transferred to Eureka and its principals the valueless stock of DMCI in furtherance of the conspiracy. *Id.* Members of the enterprise understood and believed that Eureka was backed by the Mafia and that the $10 million was realized through illegal activity. *Id.* See also, JM Aff, Exh 9 at 14; Exh 10 at 279-280. The members of the enterprise further understood and believed that the Mafia was interested in the DMCI transaction in order to launder money obtained through illegal means, and

consequently the Mafia would not and could not protest when they discovered that they had been defrauded since their entire money laundering scheme would be disclosed. *Id.* In fact, in order to further entice Eureka and its principals to provide funds, Logan was offered as a vehicle for Eureka money laundering operation. JM Aff, Exh 11; Exh 12 at 6.

The supposed Mafia members eventually identified themselves as FBI agents and arrested DeLorean, which precipitated several major setbacks for the enterprise. Not only was DeLorean arrested and charged in California, but the receivers of DMCL pressed Chapman for information regarding the disposition of the $8.5 million from the GPD contract and DMC was placed in bankruptcy. Damage control was required by the members of the enterprise to protect their interests and to prevent the discovery of their illicit activities. Chapman, Bushell, and GPD took immediate action in the United Kingdom to implement a cover-up. JM Aff, Exh 2 at 37-45. Meanwhile, DeLorean and his affiliates quickly fabricated false documents and tapes as part of a cover-up plan in the United States. JM Aff, Exh 13 at 12-16, 24-26, 29-32; Exh 9 at 68-76, 79; Exh 14-17. The members of the enterprise also planned (1) to prevent discovery of their activities by ending the bankruptcy proceedings or at the very least causing Logan to be removed from the clutches of the bankruptcy trustee, and (2) to defend their conduct and prevent the loss of their ill-gotten gains by hiring attorneys.

At least two fraudulent schemes were perpetrated by members of the enterprise in an effort to prevent discovery of their illicit activities by taking action in the bankruptcy proceedings.

Appendix L

One such scheme to defraud was the Gorman Scheme. In or about 1983, members of the enterprise concocted a scheme to purchase the assets of DMC out of bankruptcy through a supposedly independent group of investors known as the Gorman group. In reality, the Gorman group was not a group of independent investors, but rather, it was a front for DeLorean and Logan who were acting on behalf of the enterprise along with Nesseth. JM Aff, Exhibit 18 at 390-392; Exh 19 at 41-47. Eventually, the Gorman Scheme failed when the Honorable Ray Reynolds Graves ordered the Gorman transaction to be aborted upon discovery of DeLorean's, Nesseth's, and Logan's participation. JM Aff, Exh 20. Moreover, Judge Graves also ordered the forfeiture of a $100,000 earnest money deposit secretly tendered by Logan since the participants had been acting fraudulently and in bad faith. *Id.*

Another such scheme to defraud was the Creditors Scheme. In or about 1984, the members of the enterprise conspired to defraud the creditors of Logan, DMC, and DSQ by misrepresenting to them that Logan's assets were being sold to an independent company known as Pacific International Equipment Inc. ("Pacific"), when in fact the sale was being made to and through Logan's affiliates, Nesseth and DeLorean, to further the conspiracy and protect the menders of the enterprise. JM Aff, Exh at 191-192 Exh 19 at 132-134 Logan, DeLorean and Nesseth, on behalf of the enterprise, were acting through the nominee, Pacific, so that members of the enterprise could acquire the assets of Logan at less than fairmarket value and to protect against the possibility of discovery or evidence establishing the wrongful diversion of the $8.5 million. The Creditors Scheme also failed when DeLorean's, Logan's, and Nesseth's involvement was uncovered. JM Aff, Exh 21.

Appendix L

Gradually, allegations began to surface regarding the various schemes to defraud, and a multitude of lawsuits were commenced. At such time, various attorneys were retained in order to protect the interests of the members of the enterprise and defend their conduct. In keeping with the general purposes of the enterprise, the members of the enterprise engaged in schemes to defraud these attorneys by falsely promising payment for legal services in order to keep the ill-gotten gains intact. The members of the enterprise not only intended to cheat the attorneys out of legal fees and costs, but they also lied to the attorneys about their misconduct and presented fake documents and tapes in support of their positions. JM Aff, Exh 9 at 18-19, 25, 44-46, 68-69, 71-76, 79-83; Exh 14-17; Exh 10 at 272, 288-289. Every attorney hired by the members of the enterprise was an intended victim of a scheme to defraud, including, but not limited to, the attorneys delineated below.

One attorney who was a victim of such a scheme to defraud was Howard Weitzman ("Weitzman"). The Weitzman Scheme began in or about 1982 and continued through 1991. In or about 1982, Weitzman was retained to defend DeLorean in the California cocaine case which arose out of the commission of the Eureka Scheme, and he eventually was named lead counsel. Thereafter, Weitzman also was hired to represent DeLorean and Logan in the multitude of civil lawsuits arising out of the illicit activities of the enterprise. Weitzman served in that capacity until in or about 1985. In addition, Weitzman also was retained as DeLorean's lead trial counsel in the Detroit criminal action, which focused on the diversion of the $8.5 million from the GPD contract. When Weitzman was retained as lead counsel in the California cocaine case, DeLorean represented that he would be paid $2,500,000 for his legal services and expenses, but DeLorean never intended to pay Weitzman. JM Aff Exh 9 at

23, 26-28, 105; Exh 10 at 267-268, 275; Exh 22. DeLorean lied, cheated, and revised history in an effort to avoid the fee arrangement. JM Aff, Exh 9 at 23; Exh 10 at 272; Exh 11 at 59-60. At one point, it apparently became clear to DeLorean that he might lose his Pauma Valley property to creditors so he transferred the property to Weitzman as a retainer for his fee; however, DeLorean always intended on getting the property back one way or another. JM Aff, Exh 9 at 85-89. In fact, DeLorean apparently caused a sale of the property to be aborted so that Weitzman could not convert it to cash. *Id.* At the same time, DeLorean represented to Weitzman that he would be paid a minimum of $2.5 million for the California cocaine case whether the property sold for that amount or not, since DeLorean would make up the difference. JM Aff, Exh 22; Exh 23 at 73-75. In addition, DeLorean also represented to Weitzman that he would be paid as much as an additional $5 million for services rendered in future litigation such as the Detroit criminal case. *Id.* Weitzman managed to obtain $1.1 million from the ultimate sale of the Pauma Valley property, an amount that did not even cover his expenses (JM Aff, Exh 13 at 59-60), but he could not recover even the remaining minimum balance of $1.4 million for services rendered in the cocaine case, let alone the fees and expenses incurred in connection with the Pauma Valley case or the Detroit criminal trial (JM Aff, Exh 9 at 105). Although Weitzman had been betrayed and conned, he eventually wrote off trying to be paid through DeLorean since he viewed DeLorean as a sick individual and a pathological liar with no conscience or morals. JM Aff, Exh 10 at 169, 268-272, 276. In fact, although Weitzman obtained acquittals for DeLorean against great odds in the California cocaine case and the Detroit criminal trial, and provided extensive representation for DeLorean and Logan in connection with major civil lawsuits, DeLorean and Logan not only refused to fulfill their repeated representations

regarding attorney fees and expenses, but DeLorean instituted a sham malpractice counterclaim against Weitzman in an attempt to counteract the lawsuit filed by Weitzman's firm for the unpaid attorney fees. JM Aff, Exh 4 at 45-46. Previously, DeLorean had testified under oath that he would have put his head in an oven had Weitzman not continued to provide legal services through the conclusion of both criminal actions and that no amount of money could repay Weitzman for saving DeLorean's life and for the job that Weitzman performed for him. JM Aff, Exh 22.

Another attorney who was a victim of such a scheme to defraud was Thomas Kimmerly ("Kimmerly"). The Kimmerly Scheme began in 1979 and continued through 1992. From 1979 through 1992, Kimmerly was retained by DeLorean and Logan to provide legal services in connection with a multitude of tax matters for the benefit of DeLorean, Logan, and other members of the enterprise. In addition, the members of the enterprise also consulted with and requested legal services from the unsuspecting Kimmerly in connection with the GPD contract, the Lotus contract, and the Eureka transaction. Again, DeLorean, Logan, and the other members of the enterprise misrepresented to Kimmerly that he would be paid his customary hourly rate plus expenses, and misrepresented the facts and nature of the transactions that Kimmerly worked on. Kimmerly trusted DeLorean as his friend to see to it that full payment was made. But Kimmerly eventually realized that he had been duped and that DeLorean was a pathological liar and a sick man. JM Aff, Exh 4 at 12-13, 17-18, 22-23, 27-28, 236-241, 245, 251; Exh 24 at 321; Exh 25 at 260-262, 264, 266, 293, 320-321. Currently, an unpaid balance of approximately $3 million is owed to Kimmerly for legal services provided on behalf of DeLorean, Logan, and other members of the enterprise. JM

Aff, Exh 4 at 12-13, 17-18, 22-23, 27-28. As testified, Kimmerly has not instituted legal proceedings against members of the enterprise because it is clear to him that DeLorean would manufacture a sham malpractice claim to file against him which would result in protracted litigation continuing throughout the remainder of their lives. JM Aff, Exh 4 at 22-23, 29, 205, 208; Exh 25 at 347.

Another attorney who was a victim of such a scheme to defraud was Kenneth McConnell ("McConnell"). McConnell and his law firm of Howlett, Hartman, Beier & McConnell were retained in 1983 to provide representation with respect to financial and bankruptcy matters involving the activities of the members of the enterprise. Again, DeLorean planned for the members of the enterprise to receive the benefit of legal services while keeping ill-gotten gains intact by misrepresenting to McConnell that full payment for legal services would be made, even though no intention to do so existed. McConnell testified that an outstanding balance of approximately $4,300 was never satisfied by DeLorean for legal services rendered. JM Aff, Exh 26 at 5, 7, 9; Exh 24. McConnell and his firm repeatedly demanded payment through reminder statements, but DeLorean, true to form, responded with a scathing reply threatening the institution of malpractice proceedings seeking approximately $1 million in damages. JM Aff, Exh 26 at 9, 11, 17; Exh 4 at 29, 38-42, 208, 215; Exh 25 at 347-349; Exh 9 at 40-41, 100; Exh 10 at 275. McConnell and his firm simply wrote off the unpaid sum rather than engage in protracted litigation of such magnitude. JM Aff, Exh 26 at 9, 11, 17.

Bill Simon ("Simon") and his firm, Hertzog, Calamari and Gleason ("HC&G") also were victims of such a scheme to defraud. Simon and his firm were retained in or about 1982 to

defend DeLorean and Logan in actions arising out of the illicit activities perpetrated by the members of the enterprise, including, but not limited to, the DMCL and the DRLP Schemes. Although DeLorean and Logan represented that they would pay Simon's customary hourly rate for legal services, DeLorean and Logan again had no intention of doing so since they did not want to diminish their ill-gotten gains. In or about October 1983, Simon and his firm withdrew as counsel in those matters for non-payment or legal fees. DeLorean wrote a letter to the presiding judge requesting that Simon not be permitted to withdraw since, according to DeLorean, he did not have any funds to pay for legal services at that time. JM Aff, Exh 5 at 155; Exh 28. Discovery in this action has revealed, however, that DeLorean had access in just one of numerous bank accounts to more than sufficient funds to pay Simon. JM Aff, Exh 5 at 169-170; Exh 4 at 157-158, 166. After Simon was permitted to withdraw, DeLorean then took the position that Simon should not be paid since he committed malpractice. JM Aff, Exh 4 at 167; Exh 9 at 40. In or about 1984, Simon and HC&G instituted legal proceedings against DeLorean in an attempt to collect the unpaid balance due them in the amount of $87,556.60. True to form, DeLorean manufactured a sham malpractice claim against Simon by feeding false and fabricated information to replacement counsel in order to pursue same. JM Aff, Exh 3 at 57, 59-60, 68-69, 71-82, 84-85, 96-97; Exh 29 at 268-271, 466-471, 474-478; Exh 30 at 815; Exh 13 at 107-112. Eventually, summary judgment was rendered against DeLorean when he failed to produce evidence that he supposedly possessed.

Jack Weinberg ("Weinberg"), Alan Greenberg ("Greenberg"), and their firm, Graubard, Mollen, Dannett, Horowitz & Pomerantz ("GMDH&P") also were victims of such

a scheme to defraud. Weinberg, Greenberg and their firm were retained in or about 1987 to provide legal representation to DeLorean and Logan. Unbeknownst to the attorneys, they were hired in order to protect income and property derived through the illicit activities committed by members of the enterprise and to defend illicit activities perpetrated by members of the enterprise, including, but not limited to, the DMCL and DRLP Schemes. Weinberg, Greenberg, and GMDH&P provided legal services to DeLorean and Logan through January 1993 in reliance upon repeated representations by DeLorean and Logan that all legal fees and expenses would be paid. In truth, DeLorean and Logan again had no intention of paying Weinberg, Greenberg and their firm for legal services since such payment would diminish the income and property derived from the illicit activities committed by the members of the enterprise. JM Aff, Exh 24 at 399; Exh 31; Exh 32 at 349. During the course of providing legal services to DeLorean and Logan, Weinberg and Greenberg demanded payment for legal services rendered but the unpaid fees and expenses mounted. JM Aff, Exh 32 at 377-379, 396-399, 411-413. When Weinberg and Greenberg continued to press for payment of the large unpaid balance, DeLorean and Logan repeatedly represented that they did not yet have the funds to satisfy the unpaid balance, Cut that all amounts would be paid in full as soon as the sale of Logan was closed. *Id.* In fact, DeLorean represented that he was an honorable man who always paid his bills. *Id.* at 379. Ultimately, Logan was sold but no monies were paid to Weinberg, Greenberg or their firm, which left an unpaid balance of $325,000. *Id.* at 414. Instead, during the very same period in which DeLorean claimed to lack funds, he paid Freidberg approximately $1.3 million to institute and prosecute a sham malpractice claim against Weinberg, Greenberg, and GMDH&P in New York. JM Aff, Exh 33 at 52-68; Exh 34. Weinberg,

Greenberg, and GMDH&P have since filed counterclaims against DeLorean and Logan, charging RICO violations, fraud, and breach of contract.

The Plaintiffs in the instant action also were victims of such a scheme to defraud. Morganroth was retained in or about November 1982 to provide legal representation to DeLorean, Logan, and other members of the enterprise. Morganroth and his firm provided extensive legal services from November 1982 through January 1993 in connection with a multitude of matters and cases arising out of the illicit activities perpetrated by the members of the enterprise (JM Aff, Exh 35 at 89-95) based upon what Morganroth has since learned were DeLorean's and Logan's fabricated versions of events. Morganroth rendered legal services in reliance upon repeated promises and representations that he would be fully compensated for all legal services performed. JM Aff, Exh 35 at 28-36, 164-168, 187-188; Exh 29 at 265-266. Unbeknownst to Morganroth, DeLorean and Logan never had any intention of paying him for legal services, and DeLorean and Logan also repeatedly misled him as to the true facts regarding the matters that Morganroth handled. JM Aff, Exh 35A. Morganroth relied upon DeLorean's and Logan's representations and provided extensive legal services day and night for approximately ten years because Morganroth thought he had a relationship of mutual trust and friendship with DeLorean; because DeLorean and Logan had confirmed and acknowledged the outstanding amounts on a regular basis orally, in writing, under oath, and in sworn testimony; because DeLorean and Logan constantly praised Morganroth's skills and competency; because DeLorean and Logan pleaded and begged Morganroth to continue providing legal services; because partial payments were received; and because DeLorean repeatedly told individuals that Morganroth was the best lawyer

in the country and had saved his life and assets. JM Aff, Exh 35 at 118, 149, 164; Exh 29 at 263-266, 321-323, 371-374; Exh 30 at 817-819, 843-844; Exh 19 at 23-24, 30-34; Exh 36 at 69-70, 72; Exh 37. Accordingly, when DeLorean and Logan represented at various times throughout the ten year period that they did not have any funds to pay Morganroth but that full payment would be made as soon as funds became available or unrestrained, Morganroth believed them and continued to provide legal services. JM Aff, Exh 29 at 264-266; Exh 30 at 843-844; Exh 35 at 164-165. Eventually, notwithstanding the repeated promises and representations, DeLorean and Logan failed to satisfy their outstanding balance even though funds had become available and unrestrained. When Morganroth pressed for payment as monies become available and assets and properties were released, DeLorean and Logan represented that he would be paid at the closing of the sale of the New York Cooperative, but just prior to the closing Morganroth was told that no funds would be available. *See*, Complaint at 12-14, 24-25 as verified by Mayer Morganroth. Morganroth then was told that he would be paid at the closing of the sale of Logan's assets, but just prior to the closing he was told that the funds would not be disbursed to him until the end of January, 1993 due to tax considerations. JM Aff, Exh 38; Exh 29 at 456-457. Just prior to the end of January, Morganroth was told that he would be paid during the first couple of days of February in connection with a transaction involving Delorean's New Jersey estate. *See*, Complaint at 12-14, 24-25 as verified by Mayer Morganroth. Meanwhile DeLorean, Logan, and the other members of the enterprise had been plotting with Freidberg to institute a sham malpractice claim against Morganroth instead of satisfying the unpaid balance as promised. As discovery has revealed, in October 1990, DeLorean and Logan retained Freidberg to sue Morganroth when the time was right so as to

avoid payment to Morganroth for the unpaid balance. JM Aff, Exh 31; Exh 23 at 255-256, 258-251, 263. The plan was to use Morganroth to resolve all of DeLorean's and Logan's legal problems arising out of their illicit activities without having to pay Morganroth for the legal services rendered. JM Aff, Exh 31; Exh 30 at 820-822, 833-836, 839-842, 845. Thereafter, a lawsuit would be filed for the purpose of avoiding all legal fees. JM Aff, Exh 23 at 256, 258-261; Exh 33 at 119-120, 122-123; Exh 39 at 18, 66. In furtherance of the Morganroth Scheme, Freidberg called Morganroth, after having been retained to sue Morganroth, and obtained pertinent information from Morganroth under the guise that Freidberg needed to know such facts as background in order to represent DeLorean in the Weitzman litigation. JM Aff, Exh 40 at 617; Exh 24 at 337; Exh 33 at 82-83, 89-94, 100-108, 118. Ultimately, Defendants brought the shame malpractice claim against Morganroth in February 1993 in New York, after Morganroth had resolved DeLorean's and Logan's critical legal problems.[3]

ARGUMENT

I. PLAINTIFFS' RICO AND FRAUD CLAIMS DO NOT VIOLATE THE ATTORNEY-CLIENT PRIVILEGE OR THE RULES OF PROFESSIONAL ETHICS.

Defendants contend in all three of their motions that Plaintiffs' RICO and fraud claims should be dismissed because they violate "well-established ethical rules and canons which require that an attorney preserve the confidences and secrets of his clients and former clients . . . ." (*See, e.g.*, Def. RICO Br. at

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3. The sham malpractice claims instituted by DeLorean and Logan against Morganroth in New York were dismissed on January 27, 1994 by the Honorable Beatrice Shainswit as time-barred.

7). The argument founders on two separate grounds. First, even after deposing Mayer Morganroth for five full days and collecting thousands of pages of documents from Plaintiffs, Defendants fail to identify *any* "confidences" or "secrets" that have been or may be revealed by Plaintiffs in the course of pursuing these claims. Defendants apparently believe that the entire subject matter of DeLorean's repeated and well-documented frauds was somehow magically transformed into "confidences" and "secrets" merely because there was an attorney-client relationship between Plaintiffs and Defendants when some of DeLorean's fraudulent conduct occurred. But that is not the law. The attorney-client privilege protects only confidential "*communications*" between an attorney and a client, not the facts underlying those communications. Similarly, "secrets," as it is used in the Code, refers only to detrimental or embarrassing information regarding the client Gained in the professional relationship." MPRC 1.6(a). Contrary to Defendants' unsubstantiated accusation, the evidence that will be used at trial to support Plaintiffs' RICO and fraud claims is either a matter of public record or was acquired through discovery in this action, after the termination of the attorney-client relationship between Plaintiffs and Defendants.

Second, and equally fatal to Defendants' thesis, this is a case in which DeLorean and Logan contend — originally as affirmative claims in New York and here and now by way of defense and set off — that Morganroth and his firm committed malpractice. The law is well-settled that in such circumstances attorneys are *permitted* to use confidences and secrets necessary to prosecute claims for fees and to defend themselves against the charges of malpractice. As we show below, in this instance any supposed "confidences" and "secrets" that would be used to prove RICO violations or common law fraud are equally

germane to the fee claim itself and to the defense of the malpractice allegations. Moreover, we know of no case — and Defendants cite none — holding that once the client has opened the door to secrets and confidences by bringing a malpractice charge, the attorney who was wrongfully deprived of his fees is confined to a particular form of action, such as breach of contract, and may not pursue other legitimate avenues of recovery, such as fraud, as well.

A. *Plaintiffs Are Not Using Confidences or Secrets to Support Their RICO and Fraud Claims.*

As a general rule, confidential communications between an attorney and a client made during the course of the professional relationship for the purpose of giving or soliciting legal advice are privileged from disclosure. *United States* v. *Goldfarb*, 328 F.2d 280, 281 (6th Cir.), *cert. denied*, 377 U.S. 976 (1964). However, the Sixth Circuit emphasized in *Goldfarb* that "the attorney-client privilege is an exception carved from the rule requiring full disclosure, and as an exception, should not be extended to accomplish more than its purpose." *Id.* at 282. As such, the attorney-client privilege "does not envelope everything arising from the existence of an attorney-client relationship." *Id.*

It is well established that the attorney-client privilege "precludes disclosure of *communications* between attorney and client and does not protect against disclosure of the facts underlying the communication." *Humphreys, Hutcheson & Moseley* v. *Donovan*, 755 F.2d 1211, 1219 (6th Cir. 1985) (emphasis in original). *Accord*, *United States* v. *Cunningham*, 672 F.2d 1064, 1073 n.8 (2d Cir. 1982) (privilege attaches not to the underlying information but to the communications

between attorney and client about the information), *cert. denied*, 466 U.S. 951 (1984); *Sneider* v. *Kimberly-Clark Corp.*, 91 F.R.D. 1, 4 (N.D. Ill. 1980) ("only the communications, not [the] underlying facts, are privileged."). Thus, merely funneling documents past counsel will not shield those documents from disclosure. *Sneider*, 91 F.R.D. at 5. And the privilege does not extend to "information and statements obtained by an attorney from public documents or from third persons." 8 Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2017, at 137 (1970) (footnote omitted).[4]

In *Goldfarb*, *supra*, an attorney was held in contempt for failing to answer questions concerning a real estate transaction between his client and another individual. The attorney argued on appeal that the privilege should be extended to cover more than communications between the client and his attorney, contending — much like Defendants here — that "this cloak of protection should be draped around all occurrences and conversations which have any bearing, direct or indirect, upon

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4. Defendants mistakenly claim that the "prohibition against disclosure exists even if the information is part of a public record, is available from other sources, or comes to the attorney from other sources." (Def. RICO Br. at 9). While it is true that attorney-client *communications* cannot be revealed simply because the underlying factual information is available from other sources, it is not the case that *facts* available from other sources become privileged merely because they are communicated to an attorney. *See e.g.*, *Cunningham*, 672 F.2d at 1073 n.8:

> [W]e do not suggest that an attorney-client privilege is lost by the mere fact that the information communicated is otherwise available to the public. The privilege attaches not to the information but to the communication of the information.

the relationship of the attorney with his client." *Goldfarb*, 328 F.2d at 281-82. The Sixth Circuit rejected this expansive reading of the privilege:

> The privilege does not envelope everything arising from the existence of an attorney-client relationship. Communications made to an attorney in the course of his professional employment by persons other than the client or his agent are not privileged. The rule extends only to communications made by or on behalf of the client.

Id.

Because the privilege attaches only to communications between client and counsel, many areas of the attorney-client relationship — including the amount of attorneys' fees owed by a client to the client's attorney — are completely outside the scope of the privilege. "In general, the fact of legal consultation or employment, clients' identities, attorney's fees, and the scope and nature of employment are not deemed privileged." *Humphreys, Hutcheson*, 755 F.2d at 1219. *See also, United States* v. *Haddad*, 527 F.2d 537, 538-39 (6th Cir. 1975) (except in limited circumstances, the amount of attorneys' fees paid or owed by a client to his attorney are not privileged), *cert. denied*, 425 U.S. 974 (1976).

In this case, Defendants have the burden of establishing that Plaintiffs are improperly utilizing confidential material to prosecute their RICO and fraud claims. *In re Katz*, 623 F.2d 122, 125 (2d Cir. 1980) (party claiming privilege has burden of establishing its applicability to the particular circumstances); *FTC* v. *Lukens Steel Co.*, 444 F. Supp. 803, 806 (D.D.C. 1977)

("The party seeking the benefit of the privilege has the burden of demonstrating its applicability.").[5]

Moreover, because discovery is complete and Defendants have moved for partial summary judgment, Defendants also have the burden of demonstrating the absence of any genuine issue of material fact. *Adickes* v. *S.H. Kress & Co.*, 398 U.S. 144, 157 (1970). But as we show below, even after deposing Mayer Morganroth for five full days and collecting thousands of documents from Plaintiffs during discovery, Defendants have not identified any confidences or secrets that Plaintiffs are using to support their fraud and RICO claims.

1. Defendants have not identified any confidences or secrets that Plaintiffs are utilizing.

The affidavit of John Z. DeLorean submitted in support of Defendants' motion is notable in one critical respect: it does not identify even one attorney-client confidence or secret that

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5. Citing to inapplicable "disqualification" cases, defendants mistakenly contend that they do not have the burden or proving that plaintiffs are improperly revealing privileged information. (Def. RICO Br. at 13). But defendants have not moved to disqualify any counsel. Rather, they are invoking the attorney-client Privilege to *dismiss* claims based on their unsubstantiated assertion that Plaintiffs will disclose supposedly privileged communications in support of their RICO and fraud claims. In that circumstance, defendants clearly bear the burden or proving the specific applicability of the privilege. *Katz*, 623 F.2d at 125; *Lukens Steel*, 444 F. Supp. at 806. *Accord*, *International Paper Co.* v. *Fibreboard Corp.*, 63 F.R.D. 88, 94 (D. Del. 1974) ("A proper claim of privilege requires a specific designation and description of the documents within its scope as well as precise and certain reasons for preserving their confidentiality.").

Appendix L

Plaintiffs are revealing by prosecuting their RICO and fraud claims. In fact, DeLorean addresses this subject in a single, entirely generalized and conclusory sentence: "[D]uring the course of the representation of myself and Logan Manufacturing Company by Plaintiffs MAYER MORGANROTH and MORGANROTH & MORGANROTH, innumerable attorney/client communications were had between me and Plaintiffs and between officers and directors of Logan Manufacturing Company and Plaintiffs." DeLorean Aff, ¶ 8. DeLorean fails to specify any of these "innumerable" attorney-client communications, much less connect the communication to the prosecution of Plaintiffs' RICO and fraud claims.

Defendants apparently intend to rely, instead, on the affidavit of Edward Freidberg, Esq., to support their argument that Plaintiffs' claims improperly reveal Defendants' confidences and secrets. But because Freidberg is not testifying based on personal knowledge as to any communications between Plaintiffs and Defendants during the course of the attorney-client relationship, his affidavit is incompetent on this point. *See, Automatic Radio Mfg. Co.* v. *Hazeltine Research, Inc.*, 339 U.S. 827, 831 (1950) (attorney affidavit not made on personal knowledge is insufficient to support a summary judgment motion). More importantly, even a cursory look at Freidberg's affidavit shows that he has not identified any "confidences" or "secrets" that are being revealed.

As to the Eureka, DRLP and DMCL Schemes alleged in Plaintiffs' complaint, Freidberg merely states that Morganroth "represented" DeLorean in the Los Angeles and Detroit criminal trials, parts of which related to the Eureka Federal Savings, DRLP and DMCL frauds. Freidberg Aff, ¶¶ 20, 21. But merely because Morganroth "represented" DeLorean in particular

matters does not transform DeLorean's underlying fraudulent acts — *which were publicly revealed in testimony and documents during the course or those trials* — into confidential attorney-client communications. As noted, the attorney-client privilege protects only confidential communications between the lawyer and the client, not "everything arising from the "existence of an attorney-client relationship." *Goldfarb*, 328 F.2d at 281-82. Similarly, regarding the Kenneth McConnell, Bill Simon and Creditors Schemes, Freidberg does nothing more than point out, in general terms, that Morganroth "represented" Defendants during the time-period when these schemes occurred. Freidberg Aff, ¶¶ 22-23, 26.

Freidberg also mentions that Morganroth possessed various "letters and documents" during the course of his representation of Defendants. Freidberg Aff, ¶¶ 20, 21. But Freidberg fails to specify how any of these letters and documents are either confidential or secret. Simply because certain documents were in Morganroth's possession does not make them privileged. *Cf., Sneider,* 91 F.R.D. at 5 (merely funneling documents past counsel will not shield those documents from disclosure). As important, although Freidberg fails to describe the substance of any of the listed documents attached to Defendants' Exhibits 29 and 30, none of those documents appear from their description to be confidential or secret. Most are letters from third parties to DeLorean (*e.g.*, Def. Exh. 29 "5-7-82 Letter to JZD from Kalikow"). By definition these are not privileged attorney-client "communications" or "secrets." Others are public documents, which are obviously neither confidential nor secret (*e.g.*, Def. Exh. 29 "9-17-82 Press Announcement").

As for the attorney fee schemes, in which Morganroth, Thomas Kimmerly, Jack Weinberg, the Graubard Firm, Howard

Weitzman and others were all victims, Freidberg simply states that Morganroth "participated in or observed conversations regarding fee arrangements" between DeLorean and the various attorneys. Freidberg Aff, ¶¶ 24, 25 and 27. What Freidberg neglects to mention, however, is that the amount of fees owed by a client to his attorney is not privileged information to begin with. *Haddad*, 527 F.2d at 538-39. *Accord*, *Humphreys, Hutcheson*, 755 F.2d at 1219. Nor does Freidberg explain how the fact that DeLorean owes attorneys money — a fact that DeLorean testified about at his deposition, openly revealed in letters to third parties, and has been the subject of public litigation between DeLorean and many of these courser — could be deemed a "secret" pursuant to MRPC 1.6.[6]

In sum, Freidberg's unsubstantiated, incompetent affidavit does not identify any confidences or secrets that Plaintiffs are revealing by pursuing their RICO and fraud claims.

2. Plaintiffs will prove their RICO and fraud claims with evidence obtained daring discovery in this action.

Plaintiffs have taken more than a dozen depositions in this action, and have requested and received thousands of pages of documents. Plaintiffs will prove their RICO and fraud claims, not through Defendants' "confidences" or "secrets," but by calling live witnesses at trial and by introducing deposition testimony and documents acquired through discovery. By way of example, perhaps the most critical evidence in support of the fraud claim is a document from *opposing* counsel Freidberg's

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6. For example, DeLorean testified that "I owe lawyers all over the country a lot of money . . . ." JM Aff, Exh 5 at 170. And numerous lawyers have sued DeLorean to recover their fees — suits that are a matter of Public record.

files, produced after this litigation began. That December 1990 retention agreement between DeLorean and Freidberg, as well as the testimony surrounding it, shows that throughout the period in which DeLorean and Logan repeatedly promised to pay Morganroth, thereby inducing Morganroth to keep working, DeLorean had secretly retained Freidberg to bring a malpractice case against Plaintiffs, and had no intention of paying them. *See* Statement of Facts at 18-19.

Other examples of the proof that will be amassed at trial on the fraud and RICO claims — all acquired *after* the termination of the attorney-client relationship — abound:

- Michael Beeley, President of defendant Logan, testified at his deposition that from time to time Logan would receive bills from Plaintiffs; that Logan never objected to any of the bills; that Beeley would discuss the bills with DeLorean and that DeLorean would affirm their validity. JM Aff, Exh 19 at 23.

- The amount of legal fees owed to Plaintiffs would be included on Logan's financial statements and DeLorean would send letters to third parties representing that those financial statements were true and correct. *Id.* at 24. Melvin Mitchell, another Logan officer, confirmed this testimony. JM Aff, Exh 36 at 69-72.

- Beeley further testified that when Logan sent Freidberg his $250,000 retainer in 1990, Morganroth was not told, even though Morganroth was then outside general counsel for Logan. JM Aff, Exh 19 at 48.

- Beeley testified that when it came time to sell Logan at the end of 1992, DeLorean agreed that Morganroth

would be paid out of the proceeds of the sale. *Id.* at 225-26. But at the time of the Logan sale, DeLorean had already secretly retained Freidberg to sue Morganroth for malpractice. JM Aff, Exh 33 at 68-69.

- Freidberg admitted that he told DeLorean and Logan in late *1990*, sometime between his October 13, 1990 retention and the December 17, 1990 fee agreement, not to pay any legal fees to Morganroth. JM Aff, Exh 39 at 18.

- Jack Weinberg, a partner at Graubard, testified that Defendants owe Graubard $325,206.03 in legal lees and disbursements. JM Aff, Exh 1 at 413. Graubard never initiated suit to collect its fees because DeLorean repeatedly assured Weinberg and others that Graubard would be paid. *Id.* at 414-15.

- Specifically, Weinberg had various phone conversations with DeLorean in 1991 and 1992 in which DeLorean repeatedly promised that Graubard would be paid in full. At the time or these conversations, DeLorean failed to tell Weinberg that DeLorean and Logan had previously retained the Freidberg Law Corporation on October 13, 1990 to sue Graubard and Morganroth for malpractice. DeLorean continued to promise Weinberg that Graubard would be paid throughout 1991, 1992 and into early 1993 when DeLorean and Logan sued Graubard for malpractice. *Id.* at 387-91, 396-400.

- Howard Weitzman testified that in or about 1984 DeLorean owed Weitzman at least $2.5 million for legal services rendered by Weitzman on DeLorean's behalf. JM Aff, Exh 32 at 266-267.

- Weitzman did not want to sue DeLorean for the money, because "I think he's a sick individual, and I believe that he would go to extremes to make up things and say things to avoid paying the money, and I believed it then and I believe it now. I have to say that back at that time period, John was still saying he would pay me, and I guess I didn't get the joke or figure it out until late '88, early '89. Somehow I thought he would still pay my firm]." *Id.* at 275.

- When Weitzman's firm, Wyman, Bautzer, finally sued DeLorean to recover fees, DeLorean counterclaimed for malpractice.

- Kenneth McConnell testified at his deposition that he and his firm performed legal services for DeLorean, that he sent DeLorean bills for those services, and that DeLorean failed to pay McConnell or his firm. JM Aff, Exh 26 at 5-9. McConnell also testified that thereafter DeLorean sent a letter to McConnell's firm threatening a malpractice action against the firm. *Id.* at 12-13.

- McConnell testified that he told Mayer Morganroth of DeLorean's failure to pay and of his malpractice threats against McConnell's firm *after* Morganroth was sued by DeLorean in February 1993. *Id.* at 16-17.

- Thomas Kimmerly, who was General Counsel for DMC, tax advisor to Logan, and DeLorean's personal tax attorney for many years, testified that DeLorean owes him between $1.5 and $3 million in legal fees. JM Aff, Exh 4 at 12.

- Kimmerly testified that DeLorean represented that Kimmerly would be paid in full; that he performed additional legal services based on those representations; and that DeLorean never paid him the money he was owed. *Id.* at 12-13.

- Kimmerly never sued DeLorean to recover his fees because of DeLorean's habit of counterclaiming for malpractice against any attorney who sues him to recover fees. *Id.* at 23. Kimmerly testified: "My experience has been that he has sued most attorneys who had to go after him for their fees." *Id.*

In short, Plaintiffs have substantial proof to support their RICO and fraud claims based solely on the evidence collected in this action. Plaintiffs have no need to and will not rely on "confidences" or "secrets" to support their claims.

B. *Plaintiffs Are in Any Event Permitted to Reveal Confidences or Secrets Necessary to Prosecute Claims for Their Fees and to Defend Themselves Against Defendants' Baseless Malpractice Claims.*

Michigan Rule of Professional Conduct 1.6(c)(5) provides that a lawyer may reveal confidences or secrets when necessary to "establish or collect a fee." Hence, evidence introduced by Plaintiffs in support of their fee claims — evidence that includes conversations between Plaintiffs and Defendants in which Defendants represented that all past and future legal fees would be paid in full — is admissible regardless of whether that evidence reveals confidences or secrets.

Furthermore, MRPC 1.6(c)(5) also allows an attorney to reveal confidences and secrets when necessary to "defend the

lawyer or the lawyer's employees or associates against an accusation of wrongful conduct." This rule is premised on the well-established principle that the client can waive the attorney-client privilege. *Humphreys, Hutcheson*, 755 F.2d at 1219. And one of the most common ways the client waives the privilege is through an attack upon the attorneys conduct:

> A client has a privilege to keep his conversations with his attorney confidential, *but that Privilege is waived when a client attacks his attorney's competence in Divine fecal advice, puts in issue that advice and ascribes a course of action to his attorney that raises the specter of ineffectiveness or incompetence*. . . . Surely a client is not free to make various allegations of misconduct and incompetence while the attorney's lips are sealed by invocation of the attorney-client privilege. Such an incongruous result would be inconsistent with the object and purpose of the attorney-client privilege and a patent perversion of the rule. *When a client calls into public Question the competence of his attorney, the privilege is waived.*

Tasby v. United States, 504 F.2d 332, 336 (8th Cir. 1974) (emphasis added), *cert. denied*, 419 U.S. 1125 (1975).

In this case, Defendants brought malpractice claims against Plaintiffs, affirmatively in New York State court even before this Michigan action was filed and then as counterclaims in this action, in each instance seeking more than ***$70 million*** in supposed damages. Although these affirmative malpractice claims have now been dismissed on statute of limitations grounds in both forums, Defendants can and Plainly intend to

continue to use the same allegations of malpractice as a defense and potential setoff in this action. The merits of Defendants' malpractice allegations are therefore still very much alive in this case.

Those claims allege in substance that (1) Plaintiffs improperly advised Defendants to settle the 1987 DMC Bankruptcy Action (Counterclaims ¶ 105); (2) Plaintiffs improperly advised DeLorean not to defend the U.K. Action brought by DSQ (*Id.* ¶ 112); and (3) Plaintiffs "pressured" and "cajoled" Defendants into settling the DSQ Enforcement Action in October of 1990 (*Id.* ¶ 152).

To prevail on these defenses DeLorean and Logan must affirmatively show not only that the advice they received was negligent, but that there was a meritorious defense which would have precluded any recovery or reduced the amount of the judgment had the attorney competently performed. 2 Ronald E. Mallen & Jeffrey M. Smith, *Legal Malpractice* § 24.16 (3d ed. 1989); *cf.*, *Basic Food Indus. Inc.* v. *Grant*, 107 Mich. App. 685, 690, 310 N.W.2d 26, 28 (1981) (client must prove that attorney's negligence was proximate cause of the injury). Defendants will therefore have to prove, among other things, that but for Plaintiffs' supposed negligence, Defendants could have successfully defended the actions they settled or would have paid less than they did. *See*, 1 Mallen & Smith, *supra*, § 8.3, at 412 ("To establish the alleged negligence or other wrong proximately caused the loss, the Plaintiff must establish either that the loss would not have occurred or that the amount would have been less, but for the attorney's conduct.").

Whether Defendants committed the numerous frauds that were alleged against them in the DMC Bankruptcy Proceeding,

the DSQ U.K. Action and the DSQ Enforcement Action is plainly material to this issue, for it bears directly on whether, if the underlying matters DeLorean claims he was "forced" or "misled" into settling at specific amounts had been litigated, Defendants would have suffered damages far in excess of what they actually paid to resolve those claims. Hence, the DRLP, DMCL, Eureka and Creditors Schemes, all of which were at issue in the actions in which DeLorean claims Morganroth gave negligent advice, are directly relevant not merely to the RICO claims but to the defense of the malpractice allegations. Having opened the door by bringing the malpractice charges, DeLorean has waived his right to preclude Morganroth from introducing such evidence, even if it *did* reveal supposed "confidences" or "secrets." *See*, MPRC 1.6(c)(5); *Tasby*, 504 F.2d at 336.[7]

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7. Defendants' reliance on *Cannon* v. *U.S. Acoustics Corp.*, 398 F. Supp. 209 (N.D. Ill. 1975), *aff'd in part and rev'd in part*, 532 F.2d 1118 (7th Cir. 1976), is thus entirely misplaced. In *Cannon*, an attorney who was also a shareholder of his corporate client brought a derivative action alleging, *inter alia*, securities fraud claims. In a separate personal claim, he also sought legal fees that the corporation had failed to pay. The district court disqualified the attorney as a plaintiff on all claims because, in his representation of the corporation, he had acquired confidential information substantially related to the pending suit. 398 F. Supp. at 228. The Seventh Circuit affirmed as to the derivative claims but *reversed* as to the fee claims, noting that the ethical rules permit an attorney to reveal confidences or secrets necessary to establish or collect his fee. 532 F.2d at 1120. Moreover, there necessary to establish or collect his fee. 532 F.2d at 1120. Moreover, there was no assertion of malpractice in *Cannon*; hence the client, unlike DeLorean and Logan here, had not waived its right to assert privilege as to matters relevant to the defense of such claims. *Richardson v. Hamilton Int'l Corp.*, 469 F.2d 1382 (3d Cir. 1972), *cert. denied*, 411 U.S. 986 (1973), on which Defendants also rely, is similarly irrelevant because it involved neither an attorney's claim for fees nor allegations of malpractice.

(Cont'd)

Appendix L

Finally, the fact that DeLorean repeatedly failed to pay not only Morganroth but other attorneys' legal fees, would be admissible even in the absence of RICO or fraud claims under Fed. R. Civ. P. 404(b), which provides that evidence of "other acts" is admissible to show a common plan. *See, e.g., United States* v. *Ellzey,* 874 F.2d 324, 329 (6th Cir. 1989) (in prosecution for conspiracy to defraud farmers who were seeking loans to fend off foreclosure of their farms, evidence of frauds against other farmers, not mentioned in the indictment, was properly admitted under 404(b) "as evidence of a common

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(Cont'd)

Even apart from Defendants' waiver of privilege by bringing malpractice claims, Defendants have also waived the privilege through their conduct of the litigation. They actually *asked direct questions* which they knew would elicit privileged communications concerning the RICO claims. In fact, the papers submitted by Defendants in support of this motion contain an example of such a waiver. In Def. Exh 5, they attach excerpts from the deposition of Mayer Morganroth, in which Friedberg asked Morganroth to testify to privileged communications between Morganroth and DeLorean concerning the Simon Scheme:

> Q. What did Mr. DeLorean tell you the reason why he felt that Mr. Simon was negligent allowing those documents to come into the possession of Mr. Schade?
>
> A. He said that there was a visit to the Bedminster estate pursuant to the Order by the Judge, Bryant, I believe, it may have been Mary Johnson Lowe at that time in September of 1983.

Def, Exh 5 at 467. Clearly, such questions on behalf of DeLorean and Logan waive the attorney-client privilege. *Cf., Drimmer v. Appeston,* 628 F. Supp. 1249, 1251 (S.D.N.Y. 1986) (privilege waived because client allowed attorney to testify to contents of confidential communication).

plan"); *United States* v. *Ausmus*, 774 F.2d 722, 727-28 (6th Cir. 1985) (in tax evasion prosecution, evidence of defendant's failure to pay taxes, both prior to and following the years in question, properly admitted under 404(b) as evidence of a "pattern, plan, and scheme"). Since such evidence would be admissible even on Morganroth's non-fraud claims for fees, under MRPC 1.6(c) (5) Morganroth would be entitled to use supposed confidences and secrets concerning these "other acts" in any event.

* * *

Defendants have failed to identify any "confidences" or "secrets" being revealed by Plaintiffs. Plaintiffs will, in any event, prove their claims not through such "confidences" but through evidence amassed during discovery or made public in numerous earlier litigations. And even if Plaintiffs were revealing "confidences" or "secrets," the canons plainly allow such disclosure where, as here, it is necessary to prosecute claims for fees or to defend against allegations of malpractice. In short, the RICO and fraud claims are not subject to dismissal on Defendants' baseless charge of ethical violations.

II. SUBSTANTIAL EVIDENCE ESTABLISHES THE EXISTENCE OF A RICO ENTERPRISE.

Defendants disingenuously argue that Plaintiffs have not sufficiently pled a RICO enterprise and that no evidence establishes the existence of a RICO enterprise.

In light of this Honorable Court's July 30, 1993 Order, which held that Plaintiffs sufficiently have alleged a RICO enterprise, Plaintiffs need not address Defendants' attempt to reargue the adequacy of Plaintiffs' pleading.

Appendix L

Defendants miss the mark as well with their contention that no evidence exists to support the well-pled allegation of a RICO enterprise. Plaintiffs have alleged that an association in fact enterprise, as that term is defined in 18 U.S.C. §1961(4), was formed in or about 1978 for the illegitimate common purpose of unlawfully and fraudulently deriving assets, properties, and monies. Plaintiffs further have alleged that the association in fact enterprise has continued uninterrupted through the present. Plaintiffs have identified the members of the enterprise as including DeLorean, Cristina Corporation, Cristina Holdings Corporation, Logan, Chapman, Bushell, GPD, Nesseth, Freidberg, and Freidberg Law Corporation. Plaintiffs also have alleged that the enterprise is comprised of formal or informal associations in fact that function as continuing units over time through a hierarchial or consensual decision-making structure.

The United States Supreme Court has made clear that, a RICO enterprise is "a group of persons associated together for a common purpose of engaging in a course off conduct." *United States* v. *Turkette*, 452 U.S. 576, 583 (1981). The definition of an association in fact RICO enterprise is to be construed liberally and it is a broader concept than that of ordinary conspiracy. *United States* v. *Turkette*, 452 U.S. at 587, *quoting*, Pub. L. No. 91-452 §904(a), 84 Stat. 922, 944 (1970); *Sedima, S.P.R.L.* v. *Imrex Co.*, 473 U.S. 479, 497-498 (1985); *United States* v. *Russo*, 796 F.2d 1443, 1462 (11th Cir. 1986). So long as a common purpose ties together a group of individuals and/or entities, an enterprise is formed even if not every member of the enterprise knows all of the other members of the enterprise or has knowledge of all the details of the fraudulent schemes. *United States* v. *Rastelli*, 870 F.2d 822, 828 (2nd Cir. 1989), *cert. denied*, 493 U.S. 982 (1989); *United States* v. *Elliott*, 571 F.2d 880, 898, 903-90 (5th Cir. 1978).

Appendix L

A genuine issue of material fact as to the existence of an association in fact RICO enterprise is established "by evidence of an ongoing organization, formal or informal, and by evidence that the various associates function as a continuing unit." *Turkette*, 452 U.S. at 483. Circumstantial evidence alone is sufficient to establish a genuine issue of material fact as to the existence of a RICO enterprise since the affairs of the enterprise are likely to be conducted in secrecy and involve a minimal amount of necessary contact between the participants. *United States* v. *Hughes*, 895 F.2d 1135, 1142 (6th Cir. 1990), *cert. denied*, 454 U.S. 1136 (1982); *United States* v. *Griffin*, 660 F.2d 996, 1000 (4th Cir. 1981); *Elliott*, 571 F.2d at 898.

The evidence in this case more than sufficiently establishes a genuine issue of material fact as to the existence of an ongoing organization, formal or informal, with a shared common purpose and that the various associates function as a continuing unit through a hierarchial or consensual decision-making structure.

The thread tying the members of the enterprise together was the desire to obtain funds through the fraudulent vehicle of the DeLorean car entities and then to preserve those ill-gotten gains through additional fraudulent schemes. The founding members of the enterprise envisioned a tremendous opportunity to obtain assets, properties, and monies through their connection with the development of the DeLorean sports car and their relationships with one another. The evidence demonstrates that the members of the enterprise have used their positions and relationships to perpetrate various fraudulent schemes in order to derive assets, properties, and monies. An agreement to associate with and participate in the affairs of said RICO enterprise by the members may be inferred from the individual's or entity's acts. *See Hughes*, 895 F.2d at 1141, *citing, United*

Appendix L

States v. *Joseph*, 835 F.2d 1149, 1152 (6th Cir. 1987). The acts committed by the members or the enterprise reveal their coordinated nature and association, the requisite continuity of structure and personnel, and the following pattern of roles, which was necessary to carry out the racketeering activity and derive assets, monies, and property.

President: DeLorean was the founder of the DeLorean entities that were established to participate in the design, development, and manufacture of the DeLorean automobile. Additionally, DeLorean owned 100% of Cristina Corporation which owned 100% of Logan and Cristina Holdings Corporation (JM Aff, Exh 3 at 144-149; Exh 41), and DeLorean had a long time friendship and business relationship with Nesseth (*see*, pp.42). DeLorean presides over the day to day management of the affairs of the enterprise. All of the schemes were dependent upon DeLorean's relationship and control over DMCL, DRLP, and the other entities affiliated with the research, development, and manufacture of the DeLorean sports car, and DeLorean's relationship with Logan, Cristina Corporation, Cristina Holdings Corporation, and Nesseth. DeLorean, GPD, Chapman, and Bushell cooked up the DRLP and DMCL Schemes. JM Aff, Exh 4 at 182-184; Exh 3 at 51-52, 103, 114-115. After numerous incriminatory documents were discovered at Bushell's residence during a raid, Bushell pled guilty to conspiring with DeLorean and Chapman to commit bath schemes. JM Aff, Exh 2. Not only did DeLorean receive proceeds derived from both schemes (JM Aff, Exh 3 at 147-152; 155-156; Exh 25 at 448), but DeLorean also attempted to cover up the illicit activities by fabricating documents and tapes (JM Aff, Exh 13 at 12-16, 24-25, 29-32, 51-54; Exh 9 at 68-76, 79). In addition, DeLorean helped devise and directly participated in the Eureka Scheme (JM Aff, Exh 4 at 170-177;

Exh 8); the Gorman Scheme (JM Aff, Exh 4 at 188-190; Exh 18 at 391-392); Exh 19 at 41-47; Exh 9 at 92-93); the Creditors Scheme (JM Aff, Exh 4 at 191-192; Exh 19 at 132-134); and each scheme to defraud attorneys (Statement of Facts at 10-19).

Vice President: Chapman was the Chairman and controlling shareholder of Lotus, which was being pursued to perform the research, development, and manufacture of the DeLorean automobile. Chapman also formed and owned GPD. JM Aff, Exh 4 at 182; Exh 3 at 51-52; Exh 5 at 25-26; Exh 2. Chapman exercised substantial input and control over the affairs of the enterprise. The initial schemes were dependent upon his relationship with and control of GPD and Lotus. Chapman used his position with GPD and Lotus, and his professional skills, to help devise and perpetrate the DRLP and DMCL Schemes. JM Aff, Exh 5 at 25-26, 28-30, 46; Exh 4 at 182; Exh 3 at 51-52; Exh 2. GPD was used as a vehicle to enable Chapman to benefit without alerting the minority shareholders or Lotus as to what was occurring. JM Aff, Exh 5 at 29. Chapman received a substantial portion of the funds diverted in connection with both schemes. JM Aff, Exh 2; Exh 3 at 141. In or about 1981, Chapman also used his position with GPD and Lotus, and his professional skills, to cover up the illicit activities when the risk of discovery increased. JM Aff, Exh 2 at 37-45. Chapman exercised substantial input and control over the affairs of the enterprise until his death in 1982. Chapman died a member of the enterprise since he had not withdrawn from the enterprise before his death through an affirmative act. *United States* v. *Martino*, 648 F.2d 367, 397 (5th Cir. 1981), *cert. denied*, 456 U.S. 949 (1982), *citing*, *United States* v. *Bradsby*, 628 F2d 901 (5th Cir. 1980). Chapman's death in 1982 had no effect on the continuity of structure and personnel of the enterprise since "the continuity requirement does not mean that

individuals cannot leave the group or that new members cannot join at a later time." *United States* v. *Perholtz*, 842 F.2d 343, 355 (D.C. Cir.), *cert. denied*, 488 U.S. 821 (1988), *quoting*, *United States* v. *Riccobene*, 709 F.2d 214, 223 (3rd Cir.), *cert. denied*, 464 U.S. 849 (1983).

Finance Director: Bushell was the finance director of Lotus, co-owner of GPD, and an accountant. JM Aff, Exh 4 at 182; Exh 3 at 51-52; Exh 5 at 25-26; Exh 2. Bushell used his position as finance director of Lotus and co-owner of GPD, along with his professional skills as an accountant, to assist in drafting documents used in the schemes and to structure the complicated financial maneuvers utilized to carry out said schemes. JM Aff, Exh 2. Bushell also used his financial skills to attempt to cover up the illicit activities when the risk of discovery increased in 1981 and 1986. JM Aff, Exh 2 at 35-47, 49-50. Bushell received a substantial portion of the funds diverted from the DRLP and DMCL Schemes. JM Aff, Exh 1; Exh 3 at 141.

Treasurer: Logan was 100% owned by Cristina Corporation (after purchase from Thiokol), which was 100% owned by DeLorean. JM Aff, Exh 3 at 144-149; Exh 41. Logan managed funds derived from the schemes to defraud and made disbursements as required. Logan attempted to cover up the illicit activities of the enterprise by hiding the trail of funds derived from the DRLP and DMCL Schemes. JM Aff, Exh. 3 at 146-152, 155-156; Exh 25 at 273. Logan funded the earnest money deposit in the Gorman Scheme (JM Aff, Exh 4 at 190; Exh 20; Exh 19 at 41-47), paid Nesseth for services rendered on behalf of the enterprise (JM Aff, Exh 19 at 62-64, 69-70, 73-75; Exh 40 at 669-670, 678-679), and funneled funds to DeLorean under the guise of repayment on the Cristina Note

(JM Aff, Exh 3 at 146-152, 155-156). In addition, Logan attempted to preserve the ill-gotten gains of the members of the enterprise by making partial payments to attorneys to string them along and by misleading attorneys as to the full satisfaction of legal fees for services rendered. JM Aff, Exh 4 at 27, 251; Exh 19 at 23-24, 30-32, 48-49; Exh 25 at 270; Exh 36 at 69-70; Exh 30 at 818-821. Logan also was offered as a vehicle for laundering money in the Eureka Scheme, and helped devise the Creditors Scheme. JM Aff, Exh 19 at 133-134; Exh 11; Exh 12. Logan received the benefit of approximately $8.3 million of diverted funds from the DRLP and DMCL Schemes, which funds were used to satisfy the acquisition loan borrowed to purchase the assets of Logan from Thiokol. JM Aff, Exh 3 at 144-146; Exh 5 at 47. Logan also received the benefit or substantial legal services derived from the schemes to defraud attorneys. Statement of Facts at 10-19.

Foot Soldier: GPD was a Panamanian shell corporation formed and controlled by Chapman and Bushell as a conduit. JM Aff, Exh 4 at 182; Exh 3 at 51-52; Exh 5 at 25-26, 28-30; Exh 2. GPD assisted in carrying out the DRLP and DMCL Schemes by acting as the contracting party in agreements with DRLP, DMCL, and Lotus, which facilitated the illegal diversion of funds. JM Aff., Exh 5 at 28-30; Exh 4 at 182; Exh 3 at 51-52; Exh 2. GPD assisted in the attempted cover up devised by Chapman and Bushell in 1981. JM Aff, Exh 2 at 37-45.

Foot Soldier: DeLorean owned 100% of Cristina Corporation which owned 100% of Logan and Cristina Holdings Corporation. JM Aff, Exh 41; Exh 3 at 144-149. Cristina Corporation attempted to cover up the illicit activities of the members of the enterprise by hiding the trail of funds derived from the DRLP and DMCL Schemes. JM Aff, Exh 3 at

146-152, 155-156. Cristina Corporation helped funnel funds to DeLorean for his personal services as purported repayment on promissory notes. *Id.* Attorneys acting on behalf of Cristina Corporation were defrauded out of legal fees in connection with matters where Cristina Corporation was a party. In addition, Cristina Corporation attempted to further the Morganroth Scheme by sending a bribe to Kimmerly in an effort to purchase his assistance. JM Aff, Exh 25 at 360; Exh 25A.

Foot Soldier: Cristina Holdings Corporation was 100% owned by Cristina Corporation which was 100% owned by DeLorean. JM Aff, Exh 41; Exh 25 at 448. Cristina Holdings Corporation has invested proceeds derived from various schemes in an effort to generate additional income and hide the trail of funds. Cristina Holdings Corporation purchased art, antiques, and furniture which were then put to personal use by DeLorean. JM Aff, Exh 25 at 448; Exh 13 at 8-9; Exh 42. In addition, Attorneys acting on behalf of Cristina Holdings Corporation were defrauded out of legal fees in connection with matters where Cristina Holdings Corporation was a party.

Foot Soldier: Nesseth acts as the muscle man and dirty tricks operative of the enterprise. JM Aff, Exh 43 at 986-987; Exh 19 at 37-38, 53, 55, 126-128; Exh 13 at 6-7; Exh 9 at 78-79, 89-90, 101-102; Exh 36 at 43-48. Nesseth was brought in by DeLorean since they had a long time friendship and business association and Nesseth acted as DeLorean's alter ego, affiliate, and personal representative with respect to outside deals. JM Aff, Exh 19 at 62; Exh 4 at 107, 111, 188-189, 191-192, 212; Exh 18 at 363-367; Exh 23 at 11-12, 120-121, 135. The association continued notwithstanding admonitions by Weitzman, Morganroth, Beeley, and Mitchell. JM Aff, Exh 44 at 315; Exh 40 at 677; Exh 36 at 48. Often, Nesseth was placed

in official positions to facilitate his role on behalf of the enterprise, including, but not limited to, vice chairman of Logan (JM Aff, Exh 44 at 315; Exh 19 at 37-38), director of DMC (JM Aff, Exh 45; Exh 18 at 363), and an involvement with DMCI (JM Aff, Exh 45). Nesseth played an active role in the DMCL Scheme (JM Aff, Exh 45), the Gorman Scheme (JM Aff, Exh 4 at 188-189; Exh 20; Exh 19 at 41-47), the Creditors Scheme (JM Aff, Exh 4 at 191-192; Exh 19 at 133-134), the Attorneys' Schemes (JM Aff, Exh 4 at 214; Exh 30 at 831-832, 834-836), and the Eureka Scheme (JM Aff, Exh 45).

Foot Soldier: Freidberg and Freidberg Law Corporation joined the enterprise in or about 1989 in order to provide assistance to the members of the enterprise in the Weitzman, Morganroth, and Weinberg Schemes. Freidberg helped plan and implement part of the fraud upon Morganroth by causing Morganroth to perform extensive legal services for the members of the enterprise during a 2 1/2 year period in reliance upon representations and promises of payment from DeLorean and Logan during that period, even though Freidberg had been secretly preparing a sham malpractice claim against Morganroth and had advised that Morganroth not be paid. JM Aff, Exh 23 at 256, 258-261; Exh 19 at 48-49; Exh 33 at 52-68, 119, 120-123; Exh 39 at 18, 66; Exh 30 at 833, 839-840. Freidberg even called Morganroth, after having been retained to sue Morganroth, and obtained pertinent information from Morganroth under the guise that Freidberg needed to know such facts as background in order to represent DeLorean in the Weitzman litigation. JM Aff, Exh 40 at 617; Exh 29 at 337; Exh 33 at 82-83, 89-95, 100-108, 118. The fact that Freidberg and his law firm became new members of the enterprise in or about January 1989 has no effect on the continuity of structure or personnel of the enterprise. *See*, *Town of Kearny* v. *Hudson*

Meadows Urban Renewal Corp., 829 F.2d 1263, 1269 (3rd Cir. 1987); *Perholtz*, 842 F.2d at 354.

Accordingly, it is abundantly clear from the evidence that all of the requisite elements of an association in fact enterprise are present. As in *Elliott*, *supra*, it would be a perversion of natural thought and natural language to deny that the above referenced facts give rise to the inference that DeLorean and Logan knew that they were directly involved in an enterprise whose purpose was to profit from crime. The coordinated nature of DeLorean's, Logan's, and the others' acts alone is sufficient to create the inference of an ongoing association with a common purpose. *See*, *United States* v. *Qaoud*, 777 F.2d 1105, 1116 (6th Cir. 1985), *cert. denied*, 475 U.S. 1098 (1986). In fact, an association in fact enterprise consisting of DeLorean and Logan is plainly established by the evidence, even if all of the other co-conspirators were somehow found not to have been members at any time. *See*, *Perholtz*, 842 F.2d at 364.[8]

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8. Notwithstanding this Honorable Court's July 30, 1993 Order, Defendants erroneously persist in arguing that an enterprise consisting solely of DeLorean and Logan (or even Nesseth) would not be distinct from the RICO persons named as Defendants for purposes or the §1962(c) claim since said parties are affiliates. On the contrary, close ties and affiliations do not prevent separate legal entities from forming an association in fact RICO enterprise which is distinct from RICO persons for §1962 (c) purposes (no distinction requirement with respect to §1962(a), (b) or (d) claims). *See*, *Fleischhauer* v. *Feltner*, 879 F.2d 1290, 1297 (6th Cir. 1989), *cert. denied*, 493 U.S. 1074 and *cert. denied*, 494 U.S. 1027 (1990). Defendants' argument has no merit since 100% ownership of the corporate shares of another does not vitiate the fact that the two are separate legal entities capable of associating with each other in an association in fact enterprise and of being named as Defendants without running afoul of the 1962(c) distinction requirement. *Id.*

Appendix L

III. SUBSTANTIAL EVIDENCE ESTABLISHES THE EXISTENCE OF THE PATTERN OF RACKETEERING ACTIVITY.

Defendants erroneously argue that Plaintiffs have not sufficiently pled a "pattern of racketeering activity" and that no evidence establishes the existence of a "pattern of racketeering activity."

Defendants again disregard this Honorable Court's July 30, 1993 Order in an attempt to reargue issues that they already have raised by Motion and which this Honorable Court already rejected by the Order. The sufficiency of Plaintiffs' pleading of a pattern of racketeering has already been sustained. JM Aff, Exh 1.

Defendants miss the mark as well with their contention that no evidence exists to support the well-pled allegation of a RICO pattern of racketeering. Plaintiffs allege that Defendants have engaged in a pattern of committing at least hundreds of acts of racketeering in an effort to defraud Plaintiffs and other third parties. Plaintiffs further allege that this pattern of racketeering has been carried out through at least ten related fraudulent, unlawful, and wrongful schemes to defraud Plaintiffs and other third parties — schemes that involved the same or similar purposes, results, participants or methods of commission, and were otherwise interrelated and were not isolated events. *See*, Statement of Facts.[9] Plaintiffs further allege that Defendants

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9. The evidence demonstrates that "the actions alleged are neither isolated acts of racketeering activity nor a single criminal activity divided up into component parts." *Silverman* v. *Niswonger*, 761 F. Supp. 464, 471 (E.D. Mich. 1981), *citing, Robinson* v. *Kidder*,

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committed the following five different types of predicate racketeering acts as defined in 18 U.S.C. §1961(1) in furtherance of the conspiracy and the pattern of racketeering activity: (1) violation of 18 U.S.C. §1341 ("Mail Fraud"); (2) violation of 18 U.S.C. §1343 ("Wire Fraud"); (3) violation of 18 U.S.C. §1952 ("False Pretenses"); (4) violation of 18 U.S.C. §1956 ("Money Laundering"); and (5) violation of 18 U.S.C. §1957 ("Unlawful Monetary Transaction").

Evidence sufficient to establish a genuine issue of material fact as to whether the Defendants committed any act delineated in 18 U.S.C. §1961(1) on at least two occasions[10] in furtherance or even a single scheme to defraud will defeat Defendants' contentions.[11] In the case at bar, although it is sufficient for

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(Cont'd)
Peabody & Co., 674 F. Supp 243, 246 (E.D. Mich. 1987). Moreover, the repeated conduct spanning over 13 years which also by its very nature projected into the future with the threat or repetition satisfies the requirement of continuity. *H.J. Inc.* v. *Northwestern Bell*, 492 U.S. 229, 239-243 (1989); *United States* v. *Busacca*, 936 F.2d 232, 237 (6th Cir. 1991).

10. The RICO statute defines Racketeering activity as the commission of any act delineated in 18 U.S.C. §1961(1). *See*, 18 U.S.C. §1961. Furthermore, the RICO statute defines the pattern element as requiring at least two predicate acts of racketeering within a ten year period. *See*, 18 U.S.C. §1961(5).

11. The Sixth Circuit Court of Appeals expressly has held that the commission of at least two predicate acts occurring within a ten year period in furtherance of a *single* fraudulent scheme is sufficient to satisfy the pattern of racketeering activity requirement. *Newmyer* v. *Philatelic Leasing, Ltd.*, 888 F.2d 385, 396-397 (6th Cir. 1989). *Accord, Dana Corp.* v. *Blue Cross Blue Shield Mut.*, 900 F.2d 882, 886-887 (6th Cir. 1990).

purposes of this Motion to merely identify a genuine issue of material fact as to the commission of at least two predicate acts in furtherance of a single fraudulent scheme,[12] substantial evidence exists to establish a genuine issue of material fact as to the commission of numerous predicate acts in furtherance of multiple interrelated schemes with a common purpose, results, participants or methods of commission as shown below.

The DRLP Scheme

As part of the plan to illegally and fraudulently divert approximately $8.5 million (which became approximately $9.4 million with interest) in connection with the DRLP Scheme (Statement of Facts at 4-5), the members of the enterprise committed predicate acts of Mail Fraud, wire Fraud, False Pretenses, and Money Laundering.

First, the evidence demonstrates that the members of the enterprise caused the mails to be used in furtherance of the DRLP Scheme in violation of 18 U.S.C. §1341.[13] DeLorean testified that the GPD contract, which was the vehicle for perpetrating the DRLP Scheme, was negotiated through the

12. The evidence supporting the Morganroth scheme alone requires rejection of Defendants' contentions.

13. It is well settled that mail fraud has occurred even if the mailing does not contain any misrepresentations and even if the defendant lacks the actual intent to use the mails so long as the defendant acts with knowledge that use of the mails is reasonably foreseeable in connection with the scheme to defraud. *Pereira* v. *United States*, 347 U.S. 1 (1954); *United States* v. *Martino*, 648 F.2d 367, 401 (5th Cir. 1981). The mailing may even be incidental. *Dana Corp.*, 900 F.2d 882, 886 (6th Cir. 1990), *citing*, *Schmuck* v. *United States*, 109 S. Ct. 1443, 1447 (1989).

mail. JM Aff, Exh 5 at 22. Moreover, numerous letters were sent by DeLorean and others in order to put into motion the complex series of back-to-back bank transactions used to divert the monies. JM Aff, Exh 46. In addition, Kimmerly testified that he received a letter from DeLorean through the mails as an apparent cover-up attempt of the DRLP Scheme. JM Aff, Exh 25 at 401.

Second, the evidence demonstrates that the members of the enterprise used the wires in furtherance of the DRLP Scheme in violation of 18 U.S.C. §1343.[14] DeLorean and Schade both testified that the diverted funds were wired through a series of complex back to back bank transactions from the United Kingdom through Switzerland and the Netherlands to an account in the United States in furtherance of the DRLP Scheme. JM Aff, Exh 5 at 50; Exh 3 at 134-135; Exh 47.

Third, the evidence demonstrates that money and property were obtained by members of the enterprise through False Pretenses. A private placement memorandum was presented to DRLP and its partners for the supposed purpose of soliciting and raising $17.8 million for the research and development of the DeLorean sports car, however, the members of the enterprise intended to secretly divert a significant portion of those funds for their own benefit. JM Aff, Exh 2; Exh 4 at 182-184; Exh 3 at 134-136, 147-152, 155-156; Exh 5 at 28-30, 34-35, 46, 56.

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14. It is also well established that a violation of the wire fraud statute requires a showing of essentially the same elements as mail fraud; the only difference being that a wire communication is required instead of a mailing. *United States* v. *Hathaway*, 798 F.2d 902, 908, n.3 (6th Cir. 1986); *United States* v. *Tarnopol*, 561 F.2d 466, 471-473 (3rd Cir. 1977).

Fourth, the evidence demonstrates that the members of the enterprise laundered monetary instruments in violation of 18 U.S.C. §1956 in an effort to hide the trail of the funds. JM Aff, Exh 3 at 134-146, 150-152, 155-156; Exh 5 at 28-30, 34-35, 46, 50, 56; Exh 2.

The DMCL Scheme

As part of the plan to illegally and fraudulently divert at least $12.6 million in connection with the DMCL Scheme (Statement of Facts at 5-6), the members of the enterprise committed the predicate acts of Mail Fraud, Wire Fraud, False Pretenses, and Money Laundering.

First, the evidence demonstrates that the members of the enterprise caused the mails to be used in furtherance of the DMCL Scheme in violation of 18 U.S.C. §1341. Draft contracts of the agreements among DMCL, DRLP, and GPD were sent back and forth by and among DeLorean, Bushels, GPD, and Chapman through the mails. JM Aff, Exh 2 at 16-18; Exh 5 at 22. Also, DeLorean sent various letters from the United States to the other members of the enterprise in connection therewith. JM Aff, Exh 2 at 19.

Second, the evidence demonstrates that the members of the enterprise caused the wires to be used in furtherance of the DMCL Scheme in violation of 18 U.S.C. §1343. Numerous telephone calls were made in furtherance of the DMCL Scheme since DeLorean resided in the United States and Chapman, Bushell, and GPD resided overseas. Reference is made to some of the numerous telephone calls between DeLorean, Bushell, and others in JM Aff, Exh 2 at 36. *See also*, JM Aff, Exh 44 at 350-351; Exh 30 at 867-868.

Appendix L

Third, the evidence demonstrates that the members of the enterprise obtained monies and property through False Pretenses in furtherance of the DMCL Scheme. The members of the enterprise represented to DMCL that although DRLP had entered into a $17.8 million contract with GPD for the research and development of the DeLorean sports car, the GPD contract would only satisfy a portion of the financial requirements for manufacturing the prototype. Although the actual contract with GPD and Lotus was for only $10.5 million, the members of the enterprise misrepresented that, in addition to the supposed GPD contract price of $17.8 million, DMCL also would be required to separately satisfy additional (phony) invoices for work supposedly performed by Lotus in the approximate amount of $12.6 million, which the members of the enterprise fraudulently diverted for their own use. JM Aff, Exh 2; Exh 4 at 182-184; Exh 3 at 51-52, 103, 111-115.

Fourth, the evidence demonstrates that the members of the enterprise laundered monetary instruments in furtherance of the DMCL Scheme. The members of the enterprise again utilized complex financial maneuvers through bank and corporate transfers in order to launder the diverted funds derived from the DMCL Scheme. JM Aff, Exh 2.

The Eureka Scheme

As part of the plan to illegally and fraudulently obtain $10 million in connection with the Eureka Scheme (Statement of Facts at 7), the members of the enterprise committed the predicate acts of Mail Fraud, Wire Fraud, False Pretenses, Money Laundering and Unlawful Monetary Transactions.

First, the evidence demonstrates that the members of the enterprise caused the mails to be used in furtherance of the

Eureka Scheme in violation of 18 U.S.C. §1341. JM Aff, Exh 8; Exh 10 at 280-281; Exh 48.

Second, the evidence demonstrates that the members of the enterprise caused the wires to be used in furtherance of the Eureka Scheme in violation of 18 U.S.C. §1343. Numerous telephone calls were made to and from DeLorean in furtherance of the Eureka Scheme. JM Aff, Exh 8; Exh 10 at 280-281.

Third, the evidence demonstrates that the members of the enterprise attempted to obtain monies under False Pretenses in furtherance of the Eureka Scheme. Members of the enterprise attempted to defraud supposed members of the Mafia out of $10 million under the False Pretenses that the Mafia members would receive ownership in the DeLorean car company when in fact they would receive shares in a shell corporation with no assets. JM Aff, Exh 8; Exh 4 at 170-177; Exh 10 at 280-281.

Fourth, the evidence demonstrates that members of the enterprise were knowingly attempting to launder monetary instruments in furtherance of the Eureka Scheme and engaging in monetary transactions in property derived from unlawful activity. JM Aff, Exh 8; Exh 5 at 195, 199, 202; Exh 10 at 279-280.

The Creditors Scheme

As part of the plan to illegally and fraudulently obtain the assets of Logan from the bankruptcy trustee in furtherance of the Creditors Scheme (Statement of Facts at 9), the members of the enterprise committed the predicate acts of Mail Fraud, Wire Fraud, and False Pretenses.

First, the evidence demonstrates that the members of the enterprise caused the mails to be used in furtherance of the Creditors Scheme in violation of 18 U.S.C. §1341. Pleadings, Motions, and correspondence were filed with the Court and served by mail upon opposing counsel and interested parties. JM Aff, Exh 4 at 191-192; Exh 30 at 777, 778, 783, 785; Exh 21.

Second, the evidence demonstrates that the members of the enterprise caused the wires to be used in furtherance of the Creditors Scheme in violation of 18 U.S.C. §1343. DeLorean and Nesseth were in constant contact over the telephone strategizing. JM Aff, Exh 9 at 101-102.

Third, the evidence demonstrates that the members of the enterprise attempted to obtain the assets of Logan from the bankruptcy trustee under the False Pretenses that the sale of Logan's assets was being made to an independent company known as Pacific when in fact the sale was being made to and through Logan's affiliates, Nesseth and DeLorean, in furtherance of the affairs of the enterprise. JM Aff, Exh 4 at 190-192; Exh 19 at 133-134.

The Gorman Scheme

As part of the plan to illegally and fraudulently obtain DMC from the bankruptcy trustee in furtherance of the Gorman Scheme (Statement of Facts at 8-9), the members of the enterprise committed the predicate acts of Mail Fraud, Wire Fraud, False Pretenses, and Unlawful Monetary Transactions.

First, the evidence demonstrates that the members of the enterprise caused the mails to be used in furtherance of the

Gorman Scheme in violation of 18 U.S.C. §1341. Correspondence and court pleadings were sent through the mails to opposing counsel and interested parties in furtherance of the scheme. JM Aff, Exh 20 at 2-3.

Second, the evidence demonstrates that the members of the enterprise caused the wires to be used in furtherance of the Gorman Scheme in violation of 18 U.S.C. §1343. Gorman and DeLorean made several telephone calls in furtherance of the Gorman Scheme. JM Aff, Exh 20 at 6, 9-10; Exh 18 at 391-392.

Third, the evidence demonstrates that the members of the enterprise attempted to obtain the assets of DMC from the bankruptcy trustee under the False Pretenses of using a supposedly independent group of investors as a front for Logan, DeLorean, and Nesseth. JM Aff, Exh 20.

Fourth, the evidence demonstrates that the members of the enterprise engaged in Unlawful Monetary Transactions. Although in 1983, Logan's assets were subject to restraining orders issued by the Bankruptcy Court, Logan secretly paid the $100,000 earnest money deposit in furtherance of the Gorman Scheme. JM Aff, Exh 4 at 188-190; Exh 20. Moreover, the assets of Logan were substantially derived from the proceeds of the DRLP Scheme. JM Aff, Exh 3 at 134-146; Exh 7.

The Weitzman Scheme

Although Defendants argue that no evidence supports the occurrence of the Weitzman Scheme, more than sufficient evidence establishes a genuine issue of material fact as to whether members of the enterprise perpetrated a scheme to defraud Weitzman (Statement of Facts at 10-12).

Appendix L

As part of the plan to perpetrate the Weitzman Scheme, the members of the enterprise committed the predicate acts of Mail Fraud and Wire Fraud.

First the evidence demonstrates that the members of the enterprise caused the mails to be used in furtherance of the Weitzman Scheme in violation of 18 U.S.C. §1341. DeLorean sent letters through the mails to Weitzman in an effort to rewrite history regarding the fee agreements between Weitzman and DeLorean and Logan. JM Aff, Exh 9 at 18-19, 25-28, 63-64.

Second, the evidence demonstrates that the members of the enterprise caused the wires to be used in furtherance of the Weitzman Scheme in violation of 18 U.S.C. §1343. DeLorean called Weitzman attempting to rewrite history in furtherance of the fraudulent scheme. JM Aff, Exh 9 at 23; Exh 49. Nesseth repeatedly called DeLorean to devise strategies. JM Aff, Exh 9 at 101-102. DeLorean and others placed a threatening call to the prospective purchasers of the Pauma Valley Property in an effort to cause the sale to be aborted since, if it had not been, Weitzman would have received the proceeds. *Id.* at 86-89.

The Kimmerly Scheme

Although Defendants also argue that no evidence supports the occurrence of the Kimmerly Scheme, more than sufficient evidence establishes a genuine issue of material fact as to whether members of the enterprise perpetrated a scheme to defraud Kimmerly (Statement of Facts at 12-13).

As part of the plan to perpetrate the Kimmerly Scheme, the members of the enterprise committed the predicate acts of Mail Fraud and Wire Fraud.

First, the evidence demonstrates that the members of the enterprise caused the mails to be used in furtherance of the Kimmerly Scheme in violation of 18 U.S.C. §1341. Kimmerly testified that he received partial payments from Logan through the mail. JM Aff, Exh 25 at 270. Kimmerly also received numerous letters from DeLorean through the mail during the course of providing legal services, a few of which were mentioned by Kimmerly in his deposition. JM Aff, Exh 25 at 400-401, 448.

Second, the evidence demonstrates that the members of the enterprise caused the wires to be used in furtherance of the Kimmerly Scheme in violation of 18 U.S.C. §1343. DeLorean constantly placed telephone calls to Kimmerly during the course of providing legal services. JM Aff, Exh 4 at 251; Exh 25 at 267-268, 356-357.

The Simon Scheme

Defendants also contend that no evidence supports the occurrence of the Simon Scheme. However, more than sufficient evidence establishes a genuine issue of material face as to whether the members of the enterprise perpetrated a scheme to defraud Simon (Statement of Facts at 14-15).

As part of the plan to perpetrate the Simon Scheme, the members of the enterprise committed the predicate acts of Mail Fraud and Wire Fraud.

First, the evidence demonstrates that the members of the enterprise caused the mails to be used in furtherance of the Simon Scheme in violation of 18 U.S.C. §1341. DeLorean sent a letter through the mails to the presiding judge and others

in an effort to prevent Simon from withdrawing notwithstanding the failure to pay levy fees. JM Aff, Exh 5 at 155, 169; Exh 28. Furthermore, correspondence and pleadings were sent through the mails to and from DeLorean, Simon, and others. JM Aff, Exh 50.

Second, the evidence demonstrates that the members of the enterprise caused the wires to be used in furtherance of the Simon Scheme in violation of 18 U.S.C. §1343. Numerous telephone calls took place between Simon, DeLorean, and others during the time period that Simon provided legal services. JM Aff, Exh 50.

The McConnell Scheme

Although Defendants contend that no evidence exists to support the occurrence of the McConnell Scheme, more than sufficient evidence exists to establish a genuine issue of material fact as to whether the members of the enterprise perpetrated a scheme to defraud McConnell (Statement of Facts at 13-14.

As part of the plan to perpetrate the McConnell Scheme, the members of the enterprise committed the predicate acts of Mail Fraud and Wire Fraud.

First, the evidence demonstrates that the members of the enterprise caused the mails to be used in furtherance of the McConnell Scheme in violation of 18 U.S.C. §1341. The refusal to satisfy outstanding legal fees caused McConnell and his firm to send reminder requests for payment through the mails. DeLorean then sent a scathing reply letter threatening malpractice action through the mails as well. JM Aff, Exh 26 at 6-7, 9, 11.

Second, the evidence demonstrates that the members of the enterprise caused the wires to be used in furtherance of the McConnell Scheme in violation of 18 U.S.C. §1343. Numerous telephone calls took place between McConnell and DeLorean and others during the period that McConnell provided legal services. JM Aff, Exh 51.

The Weinberg Scheme

Defendants also argue that no evidence supports the allegations pertaining to the Weinberg Scheme. But more than sufficient evidence exists to establish a genuine issue of material fact as to whether the members of the enterprise perpetrated a scheme to defraud Weinberg, Greenberg and GMDH&P (Statement of Facts at 15-16).

As part of the plan to perpetrate the Weinberg Scheme, the members of the enterprise committed the predicate acts of Mail Fraud and Wire Fraud.

First, the evidence demonstrates that the members of the enterprise caused the mails to be used in furtherance of the Weinberg Scheme in violation of 18 U.S.C. §1341. During the course of providing legal services, Weinberg, Greenberg and GMDH&P sent and received numerous letters through the mails. JM Aff, Exh 32 at 319-320, 411-413; Exh 52. When Logan and DeLorean failed to timely satisfy outstanding fees, Weinberg and Greenberg also sent letters to DeLorean and Logan through the mails. JM Aff, Exh 32 at 411-413.

Second, the evidence demonstrates that the members of the enterprise caused the wires to be used in furtherance of the Weinberg Scheme in violation of 18 U.S.C. §1343. During the

course of providing legal services, Weinberg and Greenberg often spoke with DeLorean and others over the telephone. JM Aff, Exh 53 at 80-81, 174; Exh 23 at 407; Exh 52. Weinberg and Greenberg repeatedly discussed with DeLorean over the telephone the fee arrangements and the failure to timely satisfy outstanding legal fees and expenses. JM Aff, Exh 32 at 377-379, 384, 386, 388, 396-399, 400, 411, 414. During the course of providing representation, Weinberg received and sent numerous telefaxes, some of which he testified to during his deposition. JM Aff, Exh 52; Exh 54; Exh 55.

The Morganroth Scheme

Defendants disingenuously contend that no evidence supports the allegations pertaining to the Morganroth Scheme. More than sufficient evidence exists to establish a genuine issue of material fact as to whether the members of the enterprise perpetrated a scheme to defraud Morganroth and his firm out of in excess of $5.4 million (Statement of Facts at 16-19).

As part of the plan to perpetrate the Morganroth Scheme, the menders of the enterprise committed the predicate acts of Mail Fraud and Wire Fraud.

First, the evidence demonstrates that the members of the enterprise caused the mails to be used in furtherance of the Morganroth Scheme in violation of 18 U.S.C. §1341. DeLorean, Logan, and the other members of the enterprise constantly used the mails in furtherance of the scheme to defraud Morganroth over the ten year period. Ten such mailings are delineated on pages 26 and 27 of the Complaint, which is verified by Morganroth. *See also*, JM Aff, Exh 25 at 360; Exh 29 at 321-322; Exh 56.

Second, the evidence demonstrates that the members of the enterprise caused the wires to be used in furtherance of the Morganroth Scheme in violation of 18 U.S.C. §1343. DeLorean, Logan, and the other members of the enterprise constantly telefaxed and telephoned Morganroth in furtherance of the scheme to defraud Morganroth over the ten year period. Thirty-three such instances are delineated on pages 27-32 of the Complaint, which is verified by Morganroth. *See also*, JM Aff, Exh 29 at 371, 443-445; Exh 30 at 831-832; Exh 40 at 617; Exh 24 at 337; Exh 33 at 82-83, 89-94, 100-108, 118; Exh 55.

IV. SUBSTANTIAL EVIDENCE ESTABLISHES VIOLATIONS OF 18 U.S.C. §1962(a), (b), (c) AND (d).

Once again, Defendants impermissibly attempt to reargue that Plaintiffs' Complaint fails to sufficiently plead violations of 18 U.S.C. §1962(a), (b), (c) and (d) even though this Honorable Court already has rejected said contention. *See*, JM Aff, Exh 1.

Defendants' argument that no evidence supports Plaintiffs' well-pled allegations of violations of 18 U.S.C. §1962(a), (b), (c) and (d) also is misplaced, as set forth below, since more than sufficient evidence exists to establish a genuine issue of material fact as to whether Defendants violated the substantive RICO sections.

A. *Substantial Evidence Establishes Violations of 18 U.S.C. §1962(a).*

A violation of 18 U.S.C. §1962(a) occurs when a person receives income, directly or indirectly, from a pattern of

racketeering activity and uses or invests, directly or indirectly, such income or the proceeds of such income in acquisition of any interest in, or the establishment or operation of any enterprise. 18 U.S.C. §1962(a). In the case at bar, more than sufficient evidence exists to establish a genuine issue of material fact as to whether Defendants violated §1962(a).

First, the evidence demonstrates that DeLorean and Logan received income, directly or indirectly, from the pattern or racketeering. DeLorean and Logan received approximately $9.4 million from the DRLP Scheme (JM Aff, Exh 5 at 34-35, 56-57, 97, 102-103; Exh 3 at 135-156; Exh 2), additional significant amounts from the DMCL Scheme (JM Aff, Exh 3 at 114-115; Exh 4 at 182-184; Exh 2), and, at a minimum, $10.2 million from the Attorney Schemes (Statement of Facts at 10-19). Furthermore, DeLorean and Logan attempted to obtain income from the Eureka Scheme (JM Aff, Exh 8; Exh 4 at 174-176; Exh 10 at 280-281), from the Creditors Scheme (JM Aff, Exh 4 at 191-192; Exh 19 at 133-134), from the Gorman Scheme (JM Aff, Exh 4 at 190; Exh 20 Exh 19 at 41-47), and from the Simon Scheme (JM Aff, Exh 5 at 155, 169-170; Exh 28; Exh 4 at 157-158, 167; Exh 3 at 57, 59-60, 68-69, 71-72, 81, 85, 96-97; Exh 29 at 268-271, 466-471, 474-478).

Second, the evidence demonstrates that DeLorean and Logan used or invested, directly or indirectly, such income or proceeds of such income in the acquisition of any interest in, or the establishment or operation of any enterprise. A significant portion of the income derived from the DRLP and DMCL Schemes was used to pay the establishment of the enterprise and its operating expenses in carrying out said schemes. JM Aff, Exh 2 at 25-30; Exh 3 at 134-156. Moreover, a significant portion of the income derived from the DRLP Scheme was

used to satisfy the acquisition loan borrowed to purchase the assets of Logan (Statement of Facts at 4-5). A liquid Logan then reinvested $100,000 of such income into the enterprise to be used as the earnest money deposit in furtherance of the Gorman Scheme. JM Aff, Exh 20. In addition, Logan used such wrongfully derived income to make partial payments on behalf of the members of the enterprise to attorneys in order to string them along. JM Aff, Exh 29 at 264-265; Exh 4 at 27-28; Exh 25 at 270-271; Exh 53 at 200-204; Exh. 57. Logan also used the wrongfully derived income to pay Nesseth for services he rendered on behalf of the enterprise. JM Aff, Exh 40 at 669-670, 674, 678-679; Exh 19 at 63-64, 69-70, 73-75, 79, 92. Furthermore, the income which was to be derived from the Eureka Scheme was intended to be used to purchase DMC out of bankruptcy so as to enable the members of the enterprise to resume other schemes to defraud and to prevent the discovery of the schemes already implemented. (Statement of Facts at 7). Finally, some of the income that DeLorean and Logan received from the Weitzman, Kimmerly, McConnell, Weinberg, and Morganroth Schemes was used to pay the expenses incurred by the enterprise in hiring Freidberg to provide assistance in perpetrating the Weinberg and Morganroth Schemes (JM Aff, Exh 23 at 258-260; Exh 19 at 48-49; Exh 33 at 52-68; Exh 34; Exh 30 at 835-836, 839-840; Exh 32 at 378-379, 384); and also to pay settlement costs on behalf of DeLorean and Logan to DSQ with respect to the lawsuit seeking damages arising out of the DMCL Scheme.

B. *Substantial Evidence Establishes Violations of 18 U.S.C. §1962(b).*

A violation of 18 U.S.C. §1962 (b) occurs when a person acquires or maintains an interest in or control or an enterprise

through a pattern of racketeering activity. 18 U.S.C. §1962(b). Plaintiffs allege that Defendants and others formed the enterprise for the illegitimate common purpose of profiting from crime. The evidence demonstrates that DeLorean and Logan acquired an interest or control of the association in fact by exploiting their relationships and using their skills to provide assistance in perpetrating and devising the racketeering activity. *See*, Statement of Facts. DeLorean and Logan acquired their interest or control by agreeing to perform and performing racketeering acts to the benefit of the members of the enterprise. *See*, Section II at 37-40. Thereafter, DeLorean and Logan maintained said interest or control as "President" and "Treasurer" by performing the racketeering acts that they were brought in to perpetrate on the basis of their unique position to do so. *Id.* In fact, the pattern of racketeering activity enabled DeLorean to maintain control over Cristina Corporation, Cristina Holdings Corporation, and Logan, and enabled Logan to maintain control over itself by satisfying its lenders and fending off attempts to pirate its assets. *Id.*

C. *Substantial Evidence Establishes Violations of 18 U.S.C. §1962(c).*

A violation of 18 U.S.C. §1962(c) occurs when a person associated with or employed by an enterprise conducts or participates, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering or collection of unlawful debt. 18 U.S.C. §1962(c). *See also*, *Sedima*, 473 U.S. at 496. A recent Supreme Court case interprets the words "conduct" and "participate" as playing some part in directing the enterprise's affairs. *Reves* v. *Ernst & Young*, 113 S. Ct. 1163, 1170 (1993).

Appendix L

In the case at bar, the evidence demonstrates that DeLorean and Logan were associated with or employed by an enterprise and participated in the conduct of the enterprise's affairs through a pattern of racketeering activity. *See*, Section II at 37-40. First, DeLorean devised the DRLP and DMCL Schemes along with Chapman, Bushell, and GPD, and he participated in causing DRLP and DMCL to be ensnared in the trap set by the members of the enterprise. *Id.* Logan, as "treasurer," played a direct role in hiding the trail of funds diverted in connection with said schemes and making subsequent disbursements. *Id.* Second, DeLorean devised the Eureka Scheme, actually met with the intended victims, and attempted to ensnare them in the trap to defraud them. *Id.* Logan, in its capacity as "treasurer," offered itself as a vehicle for money laundering in an attempt to further entice the intended victims to fall prey to the scheme to defraud. *Id.* Third, DeLorean and Logan devised and directed the Gorman Scheme. *Id.* Logan secretly put up the $100,000 earnest money deposit which was a necessary element of said scheme. *Id.* Fourth, DeLorean and Logan devised and directed the Creditors Scheme. *Id.* Fifth, DeLorean and Logan devised and implemented each scheme to defraud attorneys. *Id.* By way of further example, Logan sent audited financial statements to Morganroth which confirmed and acknowledged the outstanding balance, DeLorean and Logan made repeated misrepresentations to Morganroth regarding satisfaction of legal fees and expenses, DeLorean and Logan sent monies to Freidberg in order to fund the sham malpractice action against Morganroth, and DeLorean and Logan made partial payments to Morganroth in order to string him along. Statement of Facts at 15-19.

Appendix L

D. *Substantial Evidence Establishes Violations of 18 U.S.C. §1962(d).*

A violation of 18 U.S.C. §1962(d) occurs when a person conspires to violate any of the provisions of §1962(a), (b) and/or (c). A plaintiff need only prove that a defendant entered into an agreement with knowledge that the goal of the conspiracy was the commission of the RICO violation. *United States* v. *Campione*, 942 F.2d 429, 437 (7th Cir. 1991). It is well established that a plaintiff need not prove that a RICO conspirator had full knowledge of all the details of the conspiracy; knowledge of the essential nature of the plan is sufficient. *Elliott*, 571 F.2d at 903-904. Furthermore, the Defendants' "agreement to participate in the RICO conspiracy may be inferred from their acts." *Hughes*, 895 F.2d at 1141, *citing*, *Joseph*, 835 F.2d at 1152 (inference drawn from defendant's acts is sufficient evidence to participate in the affairs of the enterprise). Since secrecy and concealment are essential features of a successful conspiracy, it is well established that direct evidence of agreement is unnecessary.

> Proof of such an agreement may rest upon inferences drawn from relevant and competent circumstantial evidence — ordinarily the acts and conduct of the alleged conspirators themselves. Additionally, once the conspiracy has been established, the [plaintiff] need show only slight evidence that a particular person was a member of the conspiracy. Of course, a party to a conspiracy need not know the identity, or even the number of his confederates.

Elliott, 571 F.2d at 903 (citations omitted).

In the case at bar, more than sufficient evidence exists to establish a genuine issue of material fact as to a violation of §1962(d). The evidence demonstrates that DeLorean and Logan entered into a conspiratorial agreement to violate the RICO substantive sections, and that they in fact carried out the agreement by violating §1962(a), (b), and (c). *See*, Section 11 at 37-40; Statement of Facts.

V. SUBSTANTIAL EVIDENCE ESTABLISHES INJURY TO BUSINESS OR PROPERTY BY REASON OF VIOLATIONS OF 18 U.S.C. §1962.

It is well established that §1964(c) authorizes a private suit by "any person injured in his business or property by reason of §1962." *See*, 18 U.S.C. §1964(c); *Sedima*, 473 U.S. at 495. In construing said section of the RICO statute, the United States Supreme Court specifically rejected the concept that "racketeering injury" separate from the injury caused by the predicate acts is necessary to maintain a RICO Private suit. *Id.*[15] All but a few circuits have followed the mandates of *Sedima* in construing the sufficiency of §1962(a), (b) and (c) claims. *See*, *Brandenburg* v. *Seidel*, 859 F.2d 1179, 1187 (4th Cir. 1988);

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15. The Supreme Court in *Sedima*, 473 U.S. at 497 held:

> Where the plaintiff alleges each element of the violation, the compensable injury necessarily is the harm caused by the predicate acts sufficiently related to constitute a pattern, for the essence of the violation is the commission of those acts in connection with the conduct of the enterprise. Those acts are, when committed in the circumstances delineated in §1962(c), an activity which RICO was designed to deter. Any recoverable damages occurring by reason of a violation of §1962(c) will flow from the commission of the predicate acts.

Nodine v. *Textron, Inc.*, 819 F.2d 347, 348 (1st Cir. 1987); *Corwin* v. *Marney, Orton Invest.*, 788 F.2d 1063, 1069 (5th Cir. 1986); *Haroco Inc.* v. *American Nat'l Bank & Trust Co.*, 747 F.2d 384, 398 (7th Cir. 1984), *Aff'd*, 473 U.S. 606 (1985). The Sixth Circuit, as well as some other courts, has made clear that no "racketeering injury" separate from the harm caused by the predicate acts is necessary to maintain a §1962(c) claim, but that unlike §1962(c), a plaintiff must demonstrate injury stemming directly from the defendant's alleged use or investment of illegally obtained income in connection with a §1962(a) claim. *Craighead* v. *E.F. Hutton & Co.*, 899 F.2d 485, 494 (6th Cir. 1990).

Defendants, nevertheless, incorrectly contend that a separate "racketeering injury" is required with respect to all of the substantive RICO sections. But whether one applies *Sedima* to all of the RICO claims here, or adopts the Sixth Circuit's view with respect to §1962(a) claims, the record readily reveals more than sufficient evidence of, at minimum, a genuine issue of material fact as to whether Plaintiffs suffered injury to business or property by "reason" of a violation of §1962.

It is abundantly clear that the evidence in the case at bar more than sufficiently satisfies the dictates of *Sedima*. Plaintiffs have suffered the loss of in excess of $5.4 million and their law practice also has lost clients, resources, and additional income by reason of Defendants' §1962 violations. Statement of Facts at 16-19. In fact, the evidence even satisfies the erroneous standard suggested by Defendants since the injury to Plaintiffs' business and property was caused by DeLorean's and Logan's acquisition or maintenance of an interest in the enterprise, and operation and management of the enterprise. *See*, Statement of Facts; Section II at 37-40.

Appendix L

It is also abundantly clear that the evidence more than sufficiently satisfies the dictates of *Craighead* with respect to the §1962(a) claim since Defendants used and invested Income derived from racketeering activity to establish and operate the scam on Morganroth. *Newmyer*, 888 F.2d at 397. The evidence demonstrates that the Plaintiffs have suffered injuries to business and property stemming directly from DeLorean's and Logan's use or investment of their illegally obtained income. *See*, Section IV(A) at 58-60. DeLorean and Logan used income derived from the Weitzman, Kimmerly, and McConnell Schemes, to make partial payments to Morganroth in an effort to string Morganroth along. *Id.* In reliance on the partial payments, Morganroth continued to provide legal services to DeLorean and Logan. *Id.* In addition, DeLorean and Logan also used such wrongfully derived income to secretly retain Freidberg in 1990 to institute a sham malpractice action against Morganroth in order to avoid payment. *Id.* Freidberg was retained in 1990 with wrongfully derived income that should have been paid to Weitzman, Kimmerly, McConnell, Weinberg, and Morganroth. *Id.* The sham malpractice action was not filed until Morganroth had resolved certain of DeLorean's and Logan's legal troubles approximately 2 1/2 years later, so that DeLorean and Logan could receive the additional benefits of Morganroth's services without payment. *Id.* Finally, some of the partial payments to Morganroth in furtherance of the Morganroth Scheme and the substantial monies paid to Freidberg to perfect the Morganroth Scheme were financed through the DRLP Scheme. Monies became available to Logan after Logan's acquisition loan was satisfied through the income wrongfully derived from the DRLP Scheme. *Id.* In addition, Logan funneled monies to DeLorean through the Cristina Note, which was executed as part of the DRLP Scheme. *Id.*

Appendix L

CONCLUSION

For all of the foregoing reasons, Plaintiffs respectfully request that this Honorable Court deny the Defendants' Motions, and award costs and attorney fees so wrongfully incurred by Plaintiffs.

Respectfully submitted,

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Dated: February 14, 1994

APPENDIX M — PLAINTIFF'S BRIEF IN OPPOSITION DATED FEBRUARY 14, 1994

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

* * *

PLAINTIFFS' BRIEF IN OPPOSITION TO DEFENDANTS' MOTION FOR SEPARATE TRIALS

STATEMENT OF ISSUES

WHETHER, UNDER THE STANDARDS SET OUT IN FED. R. CIV. P.42(B), DEFENDANTS' MOTION FOR SEPARATE TRIALS OF PLAINTIFFS' RICO CLAIMS AND RELATED FRAUD AND OTHER COMMON LAW CLAIMS SHOULD BE DENIED WHEN *ALL* OF PLAINTIFFS' CLAIMS — RICO AND NON-RICO — INVOLVE THE SAME KEY WITNESSES AND MUCH OF THE SAME TESTIMONY AND DOCUMENTARY EVIDENCE.

PRELIMINARY STATEMENT

In the guise of promoting the "efficient administration of justice," defendants attempt to convince the Court that it should conduct not one, but *two* trials of this action pursuant to Rule 42(b) of the Federal Rules of Civil Procedure. Defendants would first have the Court conduct a trial of plaintiffs' fraud and other common law claims, which seek to recover millions of dollars in unpaid attorneys' fees and expenses based on, among other things, defendants' repeated misrepresentations that they intended to and would pay plaintiff Morganroth's outstanding

fees. Then, if plaintiffs are awarded any damages on their fee and common law fraud claims, defendants would have the Court conduct a second trial of plaintiffs' RICO claims — involving the same key witnesses and much of the same testimony and documentary evidence as the first trial.

As we show below, where claims sought to be bifurcated under Rule 42 involve overlapping proof, the courts have repeatedly held that separate trials are inappropriate. In this case, moreover, the overlap is not only clear but substantial: much of the documentary evidence and testimony proving that defendants engaged in mail and wire fraud — predicate acts of racketeering — is the *same evidence* that will be used to support plaintiffs' common law claims. Letters, faxes and phone calls from defendants containing false representations regarding payment of attorneys' fees — used to induce Morganroth to perform additional legal work for DeLorean and Logan — will be used as evidence of predicate acts of mail and wire fraud, as proof of misrepresentations of material fact necessary to support plaintiffs' common law fraud claim, and as proof of DeLorean's breach of contract. And the same individuals — DeLorean, Logan's officers, and Morganroth among them — will be key witnesses on both the RICO claims and the related common law claims.

In these circumstances, the notion that this case should be tried twice, just because the RICO claims involve additional evidence beyond the substantial common core evidence supporting the RICO and non-RICO claims, would undermine rather than serve the fundamental goals Rule 42 was designed to promote — efficient trials that further the convenience not merely of the parties but of the Court and jurors. The further notion defendants press — that they will somehow be

"prejudiced" by one trial — is equally hard to fathom, given that DeLorean and Logan will have to defend themselves against serious common law fraud and punitive damage claims in any event. Indeed, every RICO action filed in federal court invariably includes related common law claims. Yet, as we show below, it is the overwhelming rule — with virtually no exception — that the RICO claims and common law claims are tried in a single proceeding before one jury. Nothing about this case justifies a departure from that salutary practice.

STATEMENT OF FACTS

The relevant facts are set forth in Plaintiffs' Combined Brief in Opposition to Defendants' Motion for Partial Summary Judgment Against Count I and Motions For Judgment on the Pleadings Against Counts I and II ("Plaintiffs' Combined Brief") submitted concurrently with this brief. We respectfully incorporate those facts by reference. All citations to the record are appended to the Affirmation of Jeffrey B. Morganroth ("JM Aff"), submitted in conjunction with both of plaintiffs' opposition briefs.

ARGUMENT

I. ALL OF PLAINTIFFS' CLAIMS SHOULD BE TRIED IN A SINGLE PROCEEDING

A. *Conducting separate trials pursuant to Rule 42(b) is the exception, not the rule, and is inappropriate where the claims asked to be separated involve overlapping proof.*

Rule 42(b) allows a court to order separate trials of claims or issues when such an order would be "in furtherance of

convenience, or to avoid prejudice, or . . . will be conducive to expedition and economy." Fed. R. Civ. P. 42(b). The general principles governing application of this standard are well settled. First, in deciding a Rule 42(b) motion "[i]t is the interest of efficient judicial administration that is to be controlling, rather than the wishes of the parties." 9 Charles A. Wright & Arthur R. Miller, *Federal Practice & Procedure*, § 2388, at 279 (1971). Second, although a motion under Rule 42(b) is addressed to the sound discretion of the district court, "[n]otwithstanding this discretion, a court should *not routinely* order separate trials." *THK Am., Inc. v. Nippon Seiko KK & NSK Corp.*, 141 F.R.D. 463, 464 (N.D. Ill. 1991) (emphasis in original). Rather, the starting point for any Rule 42(b) analysis is that "[a]ll issues in a case should normally be tried in the same proceeding." *Ingram Corp. v. J. Ray McDermott & Co.*, 495 F. Supp. 1321, 1334 (E.D. La. 1980). The party seeking bifurcation accordingly has the burden of proving that separate trials are warranted "in light of the general principle that a single trial tends to lessen the delay, expense and inconvenience to all parties." *Lowe v. Philadelphia Newspapers, Inc.*, 594 F. Supp. 123, 125 (E.D. Pa. 1984). *Accord Sunenblick v. Harrell*, 145 F.R.D. 314, 317 (S.D.N.Y. 1993) (separation of issues under Rule 42(b) "is not the usual course that should be followed") (quoting *Keyes Fibre Co. v. Packaging Corp. of Am.*, 763 F. Supp. 374, 375 (N.D. Ill. 1991); *Frasier v. Twentieth Century-Fox Film Corp.*, 119 F. Supp. 495, 497 (D. Neb. 1954) ("[T]he trial piecemeal of separate issues in a single suit is not the usual course."); 9 Wright and Miller, *supra*, § 2388, at 279 (separate trial of issues in a single suit "is not to be the usual course"); Fed. R. Civ. P. 42(b), Advisory Committee Note ("separation of issues for trial is not to be routinely ordered").

Finally, in deciding Rule 42(b) motions, courts often view as key whether the claims sought to be bifurcated involve "the

same witnesses" and "overlapping" documentary proof. *Organic Chems. Inc. v. Carroll Prods., Inc.*, 86 F.R.D. 468, 470–71 (W.D. Mich. 1980). A party seeking bifurcation must therefore show that "the issue to be tried [is] so distinct and separable from the others that a trial of it alone may be had without injustice." *Response of Carolina, Inc. v. Leasco Response, Inc.*, 537 F.2d 1307, 1324 (5th Cir. 1976) (citation omitted).

As we show in the next section, defendants do not come close to meeting this burden. To the contrary, because plaintiffs' RICO claims and related common law claims all share a core set of facts and involve much of the same proof, conducting two trials instead of one would not further the goals of Rule 42(b).

B. *A separate trial of plaintiffs' RICO claims will result in substantial duplication of effort by both the parties and the Court.*

A core component of plaintiffs' RICO claims are the schemes by which DeLorean and Logan, in concert with others, defrauded plaintiffs and numerous other attorneys and their firms of millions of dollars in legal fees over approximately a ten year period. The complaint charges that defendants fraudulently induced plaintiffs and other attorneys to provide extensive legal services without pay and to forebear from exercising their right to recover the fees they were legitimately owed by repeatedly making false representations that defendants would eventually pay the outstanding legal fees and expenses. Complt. ¶ 43. In furtherance of this scheme, defendants engaged in numerous RICO predicate acts of mail and wire fraud. *See*, Plaintiffs' Combined Brief at 1-19 and 46-58. As we demonstrate in Plaintiffs' Combined Brief, these allegations alone involve a

sufficient number of related and continuous predicate acts of mail and wire fraud to satisfy the RICO "pattern" requirement.[1]

Much of the proof relating to these RICO claims overlaps in substantial part with the proof required for many of the other counts in plaintiffs' complaint. For example, to prove common law fraud, Morganroth will show (1) that defendants made false representations of material fact — the repeated promises that fees due and owing would be paid; (2) that the representations deceived plaintiffs; (3) that plaintiffs relied on the representations by continuing to do legal work for defendants (indeed, for two years after DeLorean and Logan had *secretly* retained the Freidberg firm to sue Morganroth for malpractice); and (4) that plaintiffs suffered damage — performing millions of dollars of legal work that DeLorean and Logan never had any intention of paying for. *See generally, Warkentien v. Vondracek*, 633 F.2d 1, 5 (6th Cir. 1980) (defining elements of common law fraud under Michigan law). The *same* false promises to pay Morganroth (as well as others), made by mail and wire, are

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1. *See, H J., Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 242 (1989) ("[a] party alleging a RICO violation may demonstrate continuity over a closed period by proving a series of related predicates extending over a substantial period of time."). Schemes of substantially shorter duration than the 10-year conspiracy alleged in this complaint have been found to satisfy the continuity prong of the RICO "pattern" requirement. *See, e.g., Bank One of Cleveland, N.A. v. Abbe*, 916 F.2d 1067, 1079-80 (6th Cir. 1990) (plaintiffs adequately alleged a pattern where the defendants operated two bank fraud conspiracies, for more than six years, as part of a scheme to defraud several banks); *Swistock v. Jones*, 884 F.2d 755, 759 (3d Cir. 1989) (predicate acts of mail and wire fraud by defendants over a fourteen month period for the purpose of inducing plaintiffs to enter into lease is sufficient to establish continuity and hence pattern).

the predicate acts supporting the core elements of the RICO claims. Hence, the *same* documentary evidence — letters and faxes containing representations regarding attorneys' fees — and the *same* key witnesses to conversations and communications about such fees and the performance of such legal services — Mayer Morganroth, the officers of defendant Logan (Mel Mitchell, Michael Beeley and Al Rapetti), Tom Kimmerly, DMC's former general counsel, Howard Weitzman, Malcolm Schade, and DeLorean himself — will provide evidence that is equally and directly relevant to the RICO claims and the common law fraud claims.[2]

These same letters and telephone calls will also be used to support Morganroth's breach of contract and account stated claims. To prove breach of contract, plaintiffs will show that the parties entered into various agreements regarding legal services, that plaintiffs performed legal services pursuant to these agreements and that defendants failed to pay for these services. To prove an account stated, plaintiffs will show "an agreement, express or implied, that an examination of the account between

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2. It is also clear that these same key witnesses will be called to testify about many of the other schemes supporting plaintiffs' RICO claim. DeLorean obviously will be a key witness on all of the schemes. Kimmerly and the present and former Logan officers, Beeley, Mitchell and Rapettl, also have personal knowledge of many of the other fraudulent schemes. *See, e.g.*, JM Aff, Exh 4 at 170-78 (Eureka Scheme), 182-85 (DMCL Scheme), 188-90 (Gorman Scheme). Moreover, as Plaintiffs' Combined Brief sets out in Point I, evidence about these schemes is relevant not only to the RICO claims but also to Morganroth's rebuttal of DeLorean' and Logan's malpractice allegations, which defendants are pressing by way of defense and setoff. As a result, evidence of these schemes also overlaps very substantially with the evidence that will be introduced by both sides on the fee claim and malpractice defense.

the parties has occurred, a statement of that account has been asserted, and accepted as correct." *Polygram, S.A. v. 32-03 Enters. Inc.*, 697 F. Supp. 132, 136 (E.D.N.Y. 1988).

As part of the proof regarding these common law claims, plaintiffs will show — through documentary evidence and testimony — that defendants sent, or caused to be sent, numerous letters and faxes to plaintiffs and others, and had numerous phone conversations with plaintiffs regarding defendants' promises to pay fees and expenses. Plaintiffs will also show that they periodically sent defendants statements indicating the amounts owed; that defendants acknowledged that those statements were correct; and that defendants failed to pay, even though plaintiffs did in fact provide defendants with extensive legal services. But this same proof is also part and parcel of the evidence that will be used to establish that defendants engaged in predicate acts of racketeering — mail and wire fraud — under RICO.[3]

3. When plaintiffs introduce into evidence phone calls from DeLorean and Logan to plaintiffs promising to pay plaintiffs' legal fees, that evidence simultaneously supports many of plaintiffs' claims, not just the RICO claim. As an example, consider the December 21, 1992 letter from Morganroth to DeLorean confirming a phone conversation in which DeLorean represented that plaintiffs would be paid. *See, e.g.*, JM Aff, Exh 38. If the jury finds that the representation by DeLorean was false when made and was intended to deceive plaintiffs — a not unlikely prospect given that DeLorean had by then secretly retained Edward Freidberg to bring a malpractice action against Morganroth, his firm, and the Graubard firm — the jury may conclude that DeLorean committed wire fraud, a predicate act of racketeering, as well as common law fraud. If, on the other hand, the jury concludes that DeLorean was merely reaffirming past due fees or making promises to pay future fees, but acted without fraudulent intent, that same evidence will nonetheless support plaintiffs' breach of contract and account stated claims.

Clearly, plaintiffs' claims involve a substantial amount of overlapping proof. In these circumstances, holding two trials instead of one will serve only to waste the valuable time of the Court, jurors, and the parties. *See, e.g.*, *Keyes Fibre Co.*, 763 F. Supp. at 375-76 (denying Rule 42(b) motion in patent infringement action because "[t]he evidence relating to [defendant's] state of mind when it committed the infringement, which is clearly relevant to damages, cannot be neatly separated from the underlying liability issue of whether the patent was infringed upon in the first place"; hence "[a] single trial would relieve the parties of having to bring the same witnesses back into court a second time to elicit the same testimony") (footnote omitted); *Organic Chems., Inc.* 86 F.R.D. at 470 (in case involving patent issues and breach of contract claims, court denied Rule 42(b) motion requesting bifurcation of liability from damages because "evidence concerning customers and sales matters, clearly important to damages, would also be important in proving liability"); *Ingram Corp.*, 495 F. Supp. at 1324 (in an antitrust action by contractors against competitors who allegedly engaged in bid rigging, court denied motion for separate trial on statute of limitations defense where evidence of actions taken in furtherance of the alleged scheme — such as submitting prearranged losing bids to give the illusion of competition — was also relevant to whether the scheme was concealed; thus "a separate trial, rather than saving time and effort, will probably require duplication of both").

Just because this is a RICO case does not warrant any departure from these settled principles. Indeed, as we show below, trying RICO claims and related common law claims at the same time is common practice in the Sixth Circuit. In contrast, the only RICO case defendants cite in which a Rule 42(b) motion was granted — a New York district court decision

— was grounded not on anything peculiar about RICO but on the lack of overlapping evidence between the RICO claims and others.[4]

C. *Virtually all RICO actions involve a single trial of both RICO claims and related common law claims with no unwarranted "prejudice" to defendants.*

Although defendants repeatedly incant that trying the RICO claims with plaintiffs' fraud and other common law claims will "prejudice" them, they are unable to explain how that can be so, given the overlap of proof and the fact that DeLorean and Logan will stand accused of fraud in any event, whether of the common law or mail and wire variety. Defendants' argument in fact reduces to the old saw that RICO claims are inherently

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4. Defendants argue that an initial trial of plaintiffs' common law claims will dispose of the need to conduct a RICO trial unless plaintiffs recover "all" of the fees claimed under Count II of their Complaint alleging common law fraud. Def. Br. at 10. This is simply not true. If defendants recover *any* of their fees under their common law fraud theory, the same evidence of fraud will be admissible to prove that defendants engaged in a pattern of racketeering in violation of RICO. The Court would then have to conduct a second trial on plaintiffs' RICO claims — involving the same witnesses and documentary proof as the first trial.

The only way a second trial would be unnecessary is if plaintiffs fail to recover *any* of their fees under Count II, their common law fraud claim. This is highly unlikely considering that it is undisputed (a) that defendants secretly hired The Freidberg Law Corporation in October of 1990 to sue plain-future fees to induce plaintiffs to continue providing defendants with legal services, while secretly planning their baseless malpractice suit and with no intention of paying. *See, e.g.*, JM Aff, Exh 31; Exh 39 at 18.

prejudicial — a notion that has long since been rejected by the courts. Almost every RICO action filed in federal court includes pendent state law claims of fraud and other common law claims, yet a review of recent RICO jury verdicts appealed to the Sixth Circuit confirms that RICO and common law claims are all *routinely* tried together in the same proceeding, as one would expect. *See, e.g., Davis v. Mutual Life Ins. Co.*, No. 90-3560, 1993 U.S. App. LEXIS 24254, at *1 (6th Cir. Sept. 21, 1993) (appeal from jury verdict finding defendants liable under RICO, as well as under principles of common law fraud, breach of contract and breach of fiduciary duty); *Thompson v. Paasche*, 950 F.2d 306, 310 (6th Cir. 1991) (appeal from jury verdict on both RICO and common law fraud claims); *Molecular Technology Corp. v. Valentine*, 925 F.2d 910, 923-24 (6th Cir. 1991) (verdict form appended to opinion reflects jury trial encompassing Rule 10b-5 claims, RICO claims and state common law claims for negligent misrepresentation); *Fleischhauer v. Feltner*, 879 F.2d 1290, 1295 (6th Cir. 1989) (appeal of jury verdict on RICO and state law fraud claims), *cert. denied*, 493 U.S. 1074 (1990).[5]

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5. Defendants say that they will suffer "prejudice" if plaintiffs' RICO claims and plaintiffs' common law claims are tried together, because the jury will be exposed to evidence of defendants' fraud not merely on Morganroth, but on other victims as well. Def. Br. at 6. The argument is without merit. Such proof is inherent in any RICO case; one might as well argue that all RICO trials should be bifurcated, first to prove whether there were at least two predicate acts within a ten-year period and, if the jury so finds, then to conduct a second trial on "pattern" in which evidence of multiple victims and schemes would be introduced. Moreover, the Court can always give appropriate limiting instructions, for example that the frauds the Bankruptcy Trustee accused DeLorean of committing are relevant to the issue of a RICO pattern and to Morgauroth's defense of the

(Cont'd)

Appendix M

Out of the hundreds of RICO cases filed every year in federal district courts around the country, virtually every one of which includes pendent common law claims, defendants have found only one case in which a court granted a Rule 42(b) motion. Defendants, lone citation to *Duttle v. Bandler & Kass*, No. 82 Civ. 5084, 1990 WE 113187 (S.D.N.Y. July 25, 1990) is unpersuasive, however, because *Duttle*, as we show below, did not involve overlapping proof between the claims asked to be separated. Moreover, as we also show below, in a RICO action where, as here, there *was* overlapping evidence relevant to both the RICO and related common law claims, the court denied a Rule 42(b) motion. *Gordon v. Tyndall*, No. C-86-1397, 1987 U.S. Dist. LEXIS 16018 (N.D. Cal. Apr. 23, 1987).

The plaintiffs in *Duttle*, who alleged that they were induced to purchase worthless shares of stock in four companies, claimed that the law firm defendant, which had acted as SEC counsel to the companies, participated in the fraudulent scheme. Plaintiffs sought to recover against the firm, alleging RICO, federal securities fraud and New York State common law fraud claims. But in *Duttle*, unlike this case, only one isolated alleged RICO predicate act had *any* relevance to plaintiffs' other claims. Hence,

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malpractice allegations but do not prove that he is entitled to a particular fee. *See, e.g.*, 3 Edward J. Devitt, Charles B. Blackmar & Michael A. Wolff, *Federal Jury Practice and Instructions*, Civil § 70.03, at 8 (4th ed. 1987) ("Some evidence is admitted for a limited purpose only. When I instruct you that an item of evidence has been admitted for a limited purpose only, you must consider it only for that limited purpose and for no other.") The Court can, in the same vein, give what has become a standard instruction — that the jury not be prejudiced by the word "racketeering." *See, e.g.*, 4 Leonard B. Sand, et al., *Modern Federal Jury Instructions* ¶ 84.04, Instruction 84-20 (1993).

as the court found, there was virtually no "overlap" of evidence between the two sets of claims: "The securities fraud in this case involved misrepresentations made by [the mastermind of the claimed fraudulent scheme] that defendants were allegedly aware of and aided and abetted. That type of fraud is *substantially different* from the other predicate acts alleged." *Duttle*, 1990 WL 113187 at *7 n.15 (emphasis added). The court concluded, therefore, that, "given that only one of the predicate acts should be admitted . . . on the underlying [securities] fraud case, it is appropriate . . . to have separate trials on the RICO and securities fraud claims." *Id.* at *7. Here, in sharp contrast, numerous predicate acts of mail and wire fraud relating to the RICO scheme to deprive Morganroth and other attorneys of legal fees are also core evidence supporting plaintiffs' fraud and other common law claims, and the other fraudulent schemes are directly relevant to DeLorean's malpractice defense.[6]

This case is thus akin not to *Duttle*, but to *Gordon v.* Tyndall, No. C-86-1397, 1987 U.S. Dist. LEXIS 16018 (N.D. Cal. Apr. 23, 1987), in which the court denied a Rule 42(b) motion precisely because the RICO claim and the claims sought to be severed involved "overlapping" proof. The action, brought against a securities firm and two of its employees, alleged RICO violations, state and federal securities fraud claims, and common law breach of contract and negligence claims. The defendants filed a third-party claim for indemnity against a bank and an individual, Frances Reyes. Reyes then counterclaimed against the securities firm and its employees and moved, pursuant to

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6. We note that defendants' citation to *Duttle* may be incomplete. The RICO Business Dispute Guide on which defendants rely provides only the sections of the opinion relating to RICO. The entire opinion is available on WESTLAW at 1990 WL 113187.

Rule 42(b), to sever both the third-party complaint and her counterclaim from the RICO and other claims in the main action. In words that would apply here as well, the court denied the motion because of the substantial overlap in proof and the fact that Reyes — like DeLorean and representatives of Logan here — would be a key witness on all of the RICO and non-RICO claims:

> [T]he Court finds that contrary to Reyes' contentions, a severance of the third-party complaint and Reyes' counterclaim would not further convenience or be conducive to expedition and economy. . . . [T]he factual underpinnings of the main action [containing RICO claims], the third-party action, and the counterclaim are overlapping; and, a logical nexus between the two actions exists. Reyes will be a key witness in the main action. Additionally, a severance of the actions would result in the substantial duplication of witness testimony.

Id. at *4. *See also Arnette v. Bankers Trust Co. N.A.*, No. 87-1190, 1987 U.S. Dist. LEXIS 9143, at *7 (E.D. La. Sept. 24, 1987) (denying motion for separate trial in RICO action and holding that "in the absence of any clear prejudice to these defendants (and we find none), any bifurcation of the trial is unwarranted, especially in light of the burden it would create for the plaintiffs and for the court").

In this case, as in *Gordon*, the "factual underpinnings" of plaintiffs' RICO and common law claims are "overlapping," and bifurcation "would result in the substantial duplication of witness testimony." *Gordon*, 1987 U.S. Dist. LEXIS 16018, at *4. In these circumstances, the Court should not depart from "the usual rule" of a single trial.

Appendix M

CONCLUSION

For all of the foregoing reasons, this Court should deny defendants' motion and conduct one trial encompassing all of plaintiffs' claims.

Respectfully submitted,

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Dated: February 14, 1994

APPENDIX N — PLAINTIFFS' BRIEF IN OPPOSITION DATED DECEMBER 14, 1994

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

* * *

PLAINTIFFS' BRIEF IN OPPOSITION TO DEFENDANTS' MOTION FOR JUDGMENT AS A MATTER OF LAW (FED. R. CIV. P. 50(a)) RE PLAINTIFFS' RICO CLAIM

PRELIMINARY STATEMENT

Defendants' Motion for a directed verdict pursuant to Fed. R. Civ. P. 50(a) represents the third challenge made by Defendants to the very same issues regarding the sufficiency of Plaintiffs' RICO pleading and proof.

By Motion to Dismiss dated May 1993 and Motion for Summary Judgment dated December 1993, Defendants previously challenged Plaintiffs' pleading and proof regarding (i) the existence of a RICO enterprise; (ii) the existence of a pattern of racketeering activity; (iii) the existence of mail and/or wire fraud in connection with the Morganroth Scheme, (iv) the existence of injury to business or property by reason of violation of the RICO statute; and (v) the standing of Plaintiffs to pursue a RICO claim against their former clients. By Order dated July 30, 1993, this Honorable Court rejected Defendants' challenge to the sufficiency of Plaintiffs' RICO pleading in the context of Defendants' Motion to Dismiss, and resolved the aforementioned issues as a matter of law in favor of Plaintiffs. Thereafter, by Order dated February 28, 1994, this Honorable

Appendix N

Court rejected Defendants' challenge to the sufficiency of Plaintiffs' pleading and proof regarding the aforementioned issues in the context of Defendants' Motion for Summary Judgment, and determined that genuine issues of material fact exist sufficient for jury determination.

Now, Defendants again raise the same challenges to the sufficiency of Plaintiffs' pleading and proof regarding the RICO claim. But the legal propositions urged upon the Court by Defendants already have been rejected in both the July 30, 1993 Order and the February 28, 1994 Order as a matter of law. Furthermore, the sufficiency of Plaintiffs' proof also has resolved in favor of Plaintiffs by this Court's February 28, 1994 Order. In responding to Defendants' December 1993 Motion for Summary Judgment, Plaintiffs cited and relied upon the deposition testimony of DeLorean, Beeley, Mitchell, Rapetti, Schade, Thomopolous, and Weinberg to show that there is a genuine issue of material fact for jury determination. The very same deposition testimony has been read into the record at trial due to the unavailability of such witnesses. Plaintiffs also cited and relied upon deposition testimony of Weitzman, Morganroth, and Kimmerly in responding to Defendants' December 1993 Motion for Summary Judgment, which precise testimony was elicited at trial when the witnesses testified live. Not only has the identical testimony relied upon by the Court in denying Defendants' December 1993 Motion for Summary Judgment been introduced at trial, but the exhibits referred to by Plaintiffs in opposition to said Motion also have been introduced into evidence at trial as well, and additional supporting live testimony has been elicited at trial from witnesses such as Shaler, Jeffrey Morganroth, and Keating, additional supporting exhibits have been introduced into evidence at trial, and Stipulations of Fact set out in Exhibit 973 have been introduced into evidence as well.

Appendix N

STANDARD OF REVIEW

A motion for directed verdict, such as filed by Defendants with respect to Plaintiffs' RICO claim, is governed by Fed. R. Civ. P. 50(a).

Rule 50(a), in its most recent form, provides as follows:

> (a) Judgment as a Matter of Law. (1) If during a trial by jury a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue, the court may determine the issue against that party and may grant a motion for judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue.
>
> (2) Motions for judgment as a matter of law may be made at any time before submission of the case to the jury. Such a motion shall specify the judgment sought and the law and the facts on which the moving party is entitled to the judgment.

In order for a defendant to sustain a motion for a directed verdict pursuant to Fed. R. Civ. P. 50(a), the defendant must demonstrate "a complete absence of pleading or proof on an issue material to the cause of action" or the absence of any disputed issue of fact such that reasonable minds would not differ. *Tuck v. HCA Health Services of Tennessee Inc.*, 7 F.3d 465, 469 (6th Cir. 1993). In determining whether a defendant has satisfied its requisite burden, the trial court is to consider "the evidence in a light most favorable to the party against

whom the motion is made, giving that party the benefit of all reasonable inferences." *Id.* Moreover, as clearly articulated by the Sixth Circuit Court of Appeals in *Boutros v. Canton Regional Transit Authority*, 997 F.2d 198, 202 (6th Cir. 1993), an opinion this Honorable Court is well familiar with, it is well settled that a trial court may not make credibility determinations of witnesses, weigh the evidence or substitute its judgment for that of the jury in determining a motion for directed verdict. *See also*, *McDowell v. Rogers*, 863 F.2d 1302, 1307 (6th Cir. 1988). The Sixth Circuit Court in *Boutros*, *supra*, stated:

> Moreover, it is not the function of the trial court but rather that of the jury to make credibility determinations on disputed questions of fact. If sufficient evidence is presented in Plaintiff's case for a reasonable juror, if he or she found it credible, to find in Plaintiff's favor, the case must be submitted. All credibility questions must be considered most favorably to the nonmoving party, and their resolution left to the jury. *United States v. Evans*, 883 F.2d 496, 501 (6th Cir. 1989) ("[i]ssues of witness credibility . . . are strictly for the jury to determine"), *citing*, *United States v. Schultz*, 855 F.2d 1217, 1221 (6th Cir. 1988); *Chrysler Workers Ass'n. v. Chrysler Corporation*, 834 F.2d 573, 578 (6th Cir. 1987) ("[c]redibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of the judge, . . ."), *citing*, *Anderson v. Liberty Lobby. Inc.*, 477 U.S. 242, 255, 106 S. Ct. 2505, 2513, 91 L.Ed.2d 202, 216 (1986).

Accordingly, a trial court may only grant a directed verdict if there is a complete absence of proof, not on the ground that it

believes one witness and not another or on the ground that it has resolved issues of fact after weighing the evidence. *Boutros*, 997 F.2d at 202; *McDowell*, 863 F.2d at 1307.

ARGUMENT

I. A DIRECTED VERDICT MAY NOT BE RENDERED WITH RESPECT TO PLAINTIFFS' RICO CLAIM PURSUANT TO FED. R. CIV. P. 50(a).

Defendants' motion misses the mark since it is premised upon making credibility determinations regarding the testimony of witnesses, weighing the evidence adduced at trial, ignoring and disregarding evidence adduced at trial, and substituting their judgment for that of the jury. The law is clear that a directed verdict may not be rendered pursuant to Fed. R. Civ. P. 50(a) upon the considerations taken into account and urged upon this Honorable Court by the Defendants. In fact, it is abundantly clear that more than sufficient evidence has been adduced at trial with respect to each issue identified in Defendants' Brief to defeat the instant Motion, especially when viewing the evidence in the light most favorable to Plaintiffs and drawing all reasonable inferences in favor of Plaintiffs as well.

A. *More than sufficient evidence of a RICO enterprise has been adduced at trial.*

The United States Supreme Court has made clear that a RICO association in fact enterprise, as that term is defined in 18 U.S.C. § 1961(4), is "a group of persons associated together for a common purpose of engaging in a course of conduct." *United States v. Turkette*, 452 U.S. 576, 583 (1981). The definition of an association in fact RICO enterprise is to be

construed liberally and it is a broader concept than that of ordinary conspiracy. *Turkette*, 452 U.S. at 587, *quoting*, Pub. L. No. 91-452 § 904(a), 84 Stat. 922, 944 (1970); *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 497-498 (1985); *United States v. Russo*, 796 F.2d 1443, 1462 (11th Cir. 1986). So long as a common purpose ties together a group of individuals and/or entities, an enterprise is formed even if not every member of the enterprise knows all of the other members of the enterprise or has knowledge of all the details of the fraudulent schemes. *United States v. Rastelli*, 870 F.2d 822, 828 (2nd Cir. 1989), *cert den.*, 493 U.S. 982 (1989); *United States v. Elliott*, 571 F.2d 880, 898, 903-904 (5th Cir. 1978).

A factual issue as to the existence of a RICO enterprise is established "by evidence of an ongoing organization, formal or informal, and by evidence that the various associates function as continuing unit." *Turkette*, 452 U.S. at 483. Circumstantial evidence alone is sufficient to establish a factual issue as to the existence of a RICO enterprise since the affairs of the enterprise are likely to be conducted in secrecy and involve a minimal amount of necessary contact between the participants. *United States v. Hughes*, 895 F.2d 1135, 1142 (6th Cir. 1990), *cert den.*, 454 U.S. 1136 (1982); *United States v. Griffin*, 660 F.2d 996, 1000 (4th Cir. 1981); *Elliott*, 571 F.2d at 898.

The evidence adduced at trial more than sufficiently establishes a factual issue as to the existence of an ongoing association in fact, formal or informal, consisting of DeLorean and Logan, along with others such as Nesseth, Cristina Corporation, Cristina Holdings Corporation, GPD, Bushell, and Chapman, that has functioned as a continuing unit with the shared common purpose of obtaining and then preserving funds through unlawful acts perpetrated against third parties,

including, but not limited to, attorneys, especially if viewed in the light most favorable to the Plaintiffs when drawing all reasonable inferences to their benefit.

An agreement to associate with and participate in the affairs of said RICO enterprise by DeLorean, Logan and their associates may be inferred from the individual's or entity's acts. *See, Hughes,* 895 F.2d at 1141, *citing, United States v. Joseph,* 835 F.2d 1149, 1152 (6th Cir. 1987). The acts committed by DeLorean, Logan and their associates as members of the enterprise reveal their coordinated nature and association, the requisite continuity of structure and personnel, and a pattern of roles, which was necessary to carry out the racketeering activity and derive assets, monies, and properties from third parties, including, but not limited to, attorneys. In fact, the coordinated nature of DeLorean's and Logan's acts alone is sufficient to create the inference of an ongoing association with a common purpose. *See, United States v. Oaoud,* 777 F.2d 1105, 1116 (6th Cir. 1985), *cert den.*, 475 U.S. 1098 (1986). An association in fact enterprise consisting of at least DeLorean and Logan is plainly established by the evidence, which satisfies all requirements of a RICO enterprise, even if all of the other co-conspirators were somehow found not to have been members at any time. *See, United States v. Perholtz,* 842 F.2d 343, 364 (D.C. Cir. 1988). Although Defendants erroneously continue to argue that an enterprise consisting solely of DeLorean and Logan would not be distinct from the RICO persons named as Defendants for purposes of Plaintiffs' § 1962(c) claim since said parties are affiliates,[1] this Honorable Court's July 30, 1993

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1. Defendants do not make this argument with respect to Plaintiffs' other RICO claims — 1962(a) claim, 1962(b) claim or 1962(d) claim — since even Defendants acknowledge that no distinction requirement exists with respect to those claims.

Order already definitively rejected Defendants' contention based upon case law and resolved said issue in favor of Plaintiffs as a matter of law.

In any event, the evidence adduced at trial creates a factual issue as to whether DeLorean, Logan and their confederates joined together in an association in fact RICO enterprise to commit the DRLP Scheme, the DMCL Scheme, the Gorman Scheme, the Eureka Scheme, numerous Attorney Schemes as well as other RICO schemes to defraud. With respect to each such scheme, DeLorean, Logan and their confederates performed acts commensurate with their roles in the enterprise in furtherance of the schemes as follows: DeLorean was the ring leader who presided over the day-to-day management decisions of the affairs of the enterprise; Logan managed, held, and disbursed funds derived from the schemes; Chapman exercised substantial input and control over the affairs of the enterprise by using his relationship with GPD and Lotus and his professional skills to the benefit of the enterprise until he died in 1982[2]; Bushell assisted in carrying out various schemes by

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2. Defendants continue to contend that Chapman's death somehow affects the continuity of the enterprise, notwithstanding this Honorable Court's July 30, 1993 and February 28, 1994 Orders which rejected Defendants' very contention. As previously demonstrated, Chapman's death in 1982 had no such effect as a matter of law since "the continuity requirement does not mean that individuals cannot leave the group or that new members cannot join at a later time." *Perholtz*, 842 F.2d 343, *cert den.*, 488 U.S. 821 (1988), *quoting, United States v. Riccobene*, 709 F.2d 214, 223 (3rd Cir.), *cert den.*, 464 U.S. 849 (1983). In truth, Chapman died a member of the enterprise since he had not withdrawn from the enterprise before his death through an affirmative act. *United States v. Martino*, 648 F.2d 367, 397 (5th Cir. 1981), *cert den.*, 456 U.S. 949 (1982), *citing, United States v. Bradsby*, 628 F.2d 901 (5th Cir. 1980).

using his position as finance director of Lotus and co-owner of GPD along with his professional skills as an accountant to the benefit of the enterprise; GPD was used as a device to carry out certain schemes on behalf of the enterprise through the direction of Chapman and Bushell who formed and owned GPD; Cristina Corporation helped wash and funnel funds to DeLorean derived from the schemes upon the premise of repayment of a "multi-tiered loan," and attempted to hide the trail of funds derived by the enterprise by way of cover-up activities; Cristina Holdings Corporation helped wash and funnel funds derived from various schemes to DeLorean through the purchase and sale of art, antiques, and furniture; and Nesseth acted as the muscle man and antagonist on behalf of the enterprise.

Although DeLorean has refused to appear at trial to testify and specifically refused to honor Plaintiffs' subpoena calling for his appearance as a witness at trial, DeLorean's own deposition testimony in the instant action, which was read into the record at trial, as well as the Stipulation of Facts contained in Exhibit 973, more than sufficiently creates a factual issue as to the existence of a RICO association in fact enterprise as proferred below:

- DeLorean was the founder of the DeLorean entities that were established in the late 1970's to participate in the design, development, and manufacture of the DeLorean automobile.

- Chapman was the chairman and controlling shareholder of Lotus, which was being pursued to perform the research, development, and manufacture of the DeLorean automobile. Chapman also formed and owned GPD.

Appendix N

- DeLorean, Chapman, and GPD agreed that GPD would be used as the device to enable Chapman to work on the design, engineering, and manufacture of the DeLorean automobile without alerting the minority shareholders of Lotus as to what was occurring since the DeLorean automobile had the potential of putting Lotus out of business.

- Chapman received substantial consideration in return for his participation, including, but not limited to, cash and stock options.

- Bushell was the finance director of Lotus and co-owner of GPD.

- GPD was a Panamanian corporation formed and controlled by Chapman and Bushell.

- GPD acted as the contracting party, in agreements with DRLP and DMCL, wherein GPD assumed the role and responsibility of the manufacture of the DeLorean automobile.

- Through its contract with DRLP and DMCL, GPD participated in the secret diversion of $8.5 million, which became approximately $9.4 million with interest, from the funds raised for the research and development of the DeLorean automobile by DRLP without notifying the DMCL board, DRLP or any third party.

- DeLorean and Chapman, by way of the GPD contract with DRLP and DMCL, devised the plan to divert the $8.5 million, which became approximately $9.4 million

with interest, from the funds raised for the research and development of the DeLorean automobile by DRLP.

- Through a series of secret back to back bank transactions, $8.9 million of the $9.4 million diverted from the GPD contract was transferred to DeLorean's Citibank bank account.

- The funds then were used to the personal benefit of DeLorean by paying off his line of credit, purchasing jewelry for his wife, and purchasing commercial paper; and to the benefit of Logan by paying off its acquisition loan.

- The $8.9 million received from the GPD contract was carried on the books of Logan as a loan payable to Cristina Corporation which in turn carried on its books a loan payable to DeLorean (the "Cristina Note").

- Logan continually funneled funds to DeLorean under the guise of repaying the Cristina Note.

- Cristina Holdings Corporation purchased art, antiques, and furniture from the funds generated by the enterprise, and then washed and funneled funds and assets to DeLorean.

- DeLorean met with individuals whom he believed were mafia in an effort to obtain $10 million in consideration for the transfer to them of 100% ownership in a shell corporation with no assets (the "Eureka Scheme").

- DeLorean directed the preparation of a blind trust agreement in furtherance of the Eureka Scheme, which

trust even called for Cristina Corporation to contribute shares of stock.

- Logan was offered to the supposed mafia members as a money laundering device in furtherance of the Eureka Scheme.

- Nesseth was brought in by DeLorean as a muscle man. Nesseth and DeLorean had a long time friendship, business association, and affiliation, and Nesseth lived in a house owned by DeLorean.

- Nesseth was placed in official positions such as vice chairman of Logan and director of DMC.

- Nesseth's association with DeLorean and Logan continued notwithstanding admonitions of Weitzman, Morganroth, Kimmerly, and others.

- Nesseth participated in funding the $100,000 earnest money deposit in furtherance of the attempt by members of the enterprise to fraudulently purchase the assets of DMC out of bankruptcy through the so-called Gorman Group (the "Gorman Scheme").

- The Gorman Group was a front for DeLorean, Logan, Nesseth, and their confederates.

- Logan disbursed the $100,000 earnest money deposit in furtherance of the Gorman Scheme.

- With the consent of DeLorean, Logan paid substantial amounts to Nesseth far and above any salary he would have been entitled to as an officer of the corporation, and

improperly forgave substantial debts Nesseth owed to Logan.

- Nesseth was deemed an affiliate and alter ego of DeLorean.

- Both Logan and DeLorean made representations and promises to pay legal fees and expenses to attorneys for legal services performed in defense of alleged acts committed by members of the enterprise in furtherance of the enterprise's RICO schemes such as the DRLP Scheme, the DMCL Scheme, the Gorman Scheme, the Eureka Scheme, and even certain Attorney Schemes.

- Notwithstanding representations and promises that full payment would be made by DeLorean and Logan to attorneys, Logan and/or DeLorean failed to satisfy such legal fees and expenses owed to numerous attorneys, including, but not limited to, Weitzman, Berger, Simon, Kimmerly, Morganroth, and Weinberg for legal services rendered.

- Logan sent to Morganroth its audited financial statements certified under oath by DeLorean as being true and accurate which reflected the legal fees owing to Morganroth, and which Morganroth relied upon in continuing to provide services.

- Logan and DeLorean made representations, certifications, and acknowledgments to Morganroth and Weinberg regarding the outstanding balance owed to them and their law firms respectively and promised payment in full even for 2½ years after Logan and DeLorean already had retained Freidberg Law Corporation to sue Morganroth and Weinberg, and had no intention of paying them.

- Logan and DeLorean made partial payments to the attorneys such as Weitzman, Berger, Simon, Kimmerly, Morganroth, and Weinberg for legal services rendered, which the attorneys believed at the time to be good faith payments, thereby stringing them along.

In addition, other witnesses such as Kimmerly, Shaler, Thomopolous, Beeley, Rapetti, Weinberg, and Schade testified and provided additional details regarding the continued association, coordination of roles, and pattern of activity by DeLorean, Logan and their confederates as members of an enterprise regarding the DRLP Scheme, DMCL Scheme, Eureka Scheme, Gorman Scheme, and Attorneys Schemes, thereby confirming and even adding to DeLorean's testimony.

Moreover, numerous exhibits in evidence demonstrate or at least create a factual issue as to the coordinated nature, continuity and association of DeLorean, Logan and their confederates with respect to the complained of schemes, as well, such as Exhibits 6(B), 12, 15, 27, 31(A), 31(B), 34, 35, 36, 48, 56, 405, 420, 422, 423, 545, 596, 599, 605, 618, 620, 686, 910, 952, 953(A)–953(C), and 954–959.

Accordingly, it is abundantly clear from the evidence that a factual issue exists as to whether the requisite elements of an association in fact enterprise are present. As in *Elliott*, *supra*, the above referenced facts give rise to the inference that DeLorean and Logan knew that they were directly involved in an enterprise whose purpose was to profit from schemes to defraud.

Appendix N

B. *More than sufficient evidence of the pattern of racketeering activity has been adduced at trial.*

The RICO statute defines racketeering activity as the commission of any act delineated in 18 U.S.C. § 1961(1). *See*, 18 U.S.C. §1961(1). Furthermore, the RICO statute defines the pattern element as requiring the commission of at least two predicate acts of racketeering within ten years of each other. *See*, 18 U.S.C. §1961(5). The two predicate acts must be related and amount to or pose a threat of continued activity in order to be considered in connection with the pattern element. *See*, *Sedima*, 473 U.S. at 496; *H.J. Inc. v. Northwestern Bell*, 492 U.S. 229, 239–243 (1989). Predicate acts are "related" if they have "the same or similar purposes, results, participants, victims or methods of commission, or otherwise are interrelated." *Id.* So long as "the actions alleged are neither isolated acts of racketeering activity nor a single criminal activity divided up into component parts," the predicate acts are considered to be "related." *Silverman v. Niswonger*, 761 F. Supp. 464, 471 (E.D. Mich 1991); *citing, Robinson v. Kidder, Peabody & Co.*, 674 F. Supp. 243, 246 (E.D. Mich. 1987). In addition, the Supreme Court has explained that "continuity" is "a closed and open-ended concept, referring either to a closed period of repeated conduct, or to past conduct that by its very nature projects into the future with a threat of repetition." *H.J. Inc.*, 492 U.S. at 241. *See also*, *United States v. Busacca*, 936 F.2d 232, 237 (6th Cir. 1991). Thus, the continuity element is satisfied where the predicate acts extend over a substantial period of time or can be attributed to a defendant operating as part of a long term association or by its very nature projects into the future with a threat of repetition. *H.J. Inc.*, 492 U.S. at 242–243.

Appendix N

Although RICO enterprises often engage in multiple interrelated RICO schemes, as is the case here, the Sixth Circuit Court of Appeals expressly has held that the commission of at least two predicate acts occurring within ten years of each other in furtherance of even a *single* fraudulent scheme is sufficient to satisfy the pattern of racketeering activity element. *Newmyer v. Phitaletic Leasing, Ltd.*, 888 F.2d 385, 396–397 (6th Cir. 1989). *Accord, Dana Corp. v. Blue Cross Blue Shield Mut.*, 900 F.2d 882, 886–887 (6th Cir. 1990) (emphasis supplied). Accordingly, although it is sufficient for purposes of this Motion to merely identify a factual issue as to the commission of at least two predicate acts in furtherance of even *one single* fraudulent scheme, such as the Morganroth Scheme, more than sufficient evidence has been adduced at trial to establish a factual issue as to the commission of numerous predicate acts[3] in furtherance of the Morganroth Scheme as well as other multiple interrelated schemes (the DMCL Scheme, DRLP Scheme, Eureka Scheme, Gorman Scheme, Simon Scheme, McConnell Scheme, Weinberg Scheme, Weitzman Scheme, Kimmerly Scheme, Bailie Scheme, and Creditors Scheme) with common purpose, results, participants or methods of commission. Due to space limitations, only a sampling of such evidence is delineated below with respect to a few of such interrelated RICO schemes.

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3. Plaintiffs have alleged and produced evidence at trial that Defendants committed the following five different types of predicate racketeering acts as specified and defined in 18 U.S.C. § 1961(1) in furtherance of the conspiracy and pattern of racketeering activity: (1) violation of 18 U.S.C. § 1341 ("Mail Fraud"); (2) violation of 18 U.S.C. § 1343 ("Wire Fraud'); (3) violation of 18 U.S.C. § 1952 ("False Pretenses"); (4) violation of 18 U.S.C. § 1956 ("Money Laundering"); and (5) violation of 18 U.S.C. §1957 ("Unlawful Monetary Transaction").

Appendix N

The Morganroth Scheme

The testimony of Morganroth, DeLorean, and Kimmerly reveals that Morganroth was retained in or about November 1982 to provide legal representation to DeLorean and Logan. Morganroth, DeLorean, Kimmerly, and Beeley further testified that Morganroth and his firm provided extensive legal services from November 1982 through January 1993 in connection with a multitude of matters and cases arising out of the illicit activities perpetrated by the members of the enterprise based upon what Morganroth has since learned, according to the testimony of Morganroth and Kimmerly, were DeLorean's and Logan's fabricated versions of events. Morganroth and Jeffrey Morganroth testified that Morganroth rendered legal services in reliance upon repeated promises and representations that he would be fully compensated for all legal services performed, which DeLorean, Beeley, and Mitchell confirmed during their testimony.

Unbeknownst to Morganroth, DeLorean and Logan never had any intention of paying him for legal services, and DeLorean and Logan also repeatedly misled him as to the true facts regarding the matters that Morganroth handled, as indicated in the testimony of Morganroth and Kimmerly. Morganroth and Jeffrey Morganroth further testified that Morganroth relied upon DeLorean's and Logan's representations of full payment and provided extensive legal services day and night for approximately ten years because Morganroth thought he had a relationship of mutual trust and friendship with DeLorean; because DeLorean and Logan had confirmed and acknowledged the outstanding amounts owed to Morganroth on a regular basis orally, in writing, under oath, and in sworn testimony; because DeLorean and Logan constantly praised Morganroth's skills

and competency and expressed their gratitude and satisfaction with respect to legal services rendered; because DeLorean and Logan pleaded and begged Morganroth to continue providing legal services; because partial payments were received which Morganroth had viewed as being made in good faith; and because DeLorean repeatedly stated that Morganroth was the best lawyer in the country and had saved his life and Defendants' assets, which testimony was confirmed by DeLorean, Beeley, Mitchell, Rapetti, Schade, Kimmerly, and Keating. Accordingly, Morganroth and Jeffrey Morganroth testified that when DeLorean and Logan represented at various times throughout the ten year period that they did not have available funds to pay Morganroth but that full payment would be made as soon as funds became available or constantly unrestrained, Morganroth believed them and continued to provide legal services.

Eventually, notwithstanding the repeated promises and representations, DeLorean and Logan failed to satisfy their outstanding balance even though it became apparent that funds had become available and unrestrained as testified by Morganroth, Jeffrey Morganroth, DeLorean, Beeley, Mitchell, and Rapetti. Morganroth and Jeffrey Morganroth further testified that when Morganroth pressed for payment as he learned that monies became available and assets and properties were released, DeLorean and Logan represented that Morganroth would be paid at the closing of the sale of the New York Cooperative, but just prior to the closing Morganroth was told that no funds would be available, as confirmed by DeLorean's testimony. Morganroth and Jeffrey Morganroth testified that Morganroth then was told that he would be paid at the closing of the sale of Logan's assets, but just prior to the closing he was told by Defendants that the funds would not be disbursed to him until

the end of January, 1993 due to tax considerations, as confirmed by the testimony of DeLorean and Beeley. Morganroth and Jeffrey Morganroth further testified that just prior to the end of January, Morganroth was told that he would be paid during the first couple of days of February in connection with a transaction involving DeLorean's New Jersey estate, which DeLorean confirmed in part during his testimony.

Meanwhile, the testimony of Shaler reveals that DeLorean had received and obtained large sums of money during the very time that he was making representations of financial hardship to Morganroth. In addition, the testimony of DeLorean and Beeley reveals that DeLorean, Logan, and the other members of the enterprise had been plotting with Freidberg to institute a sham action against Morganroth instead of satisfying the unpaid balance as promised during the very time period that the representations and promises of payment were repeatedly made to Morganroth. As indicated by DeLorean in his testimony, DeLorean and Logan secretly retained Freidberg in October 1990 to sue Morganroth when the time was right in order to avoid payment to Morganroth for the large unpaid balance they owed, but that for the period of 2½ years after the retention of Freidberg, DeLorean and Logan continued to use Morganroth to perform additional legal services and continued to repeatedly make representations and promises of full payment without having any intention of doing so. The testimony of Morganroth and Jeffrey Morganroth reveals that in furtherance of the Morganroth Scheme, Freidberg called Morganroth, after having been retained to sue Morganroth, and obtained information from Morganroth relevant to the lawsuit secretly planned to be filed against Morganroth under the guise that Freidberg needed to know such facts as background in order to represent DeLorean in the Wyman Bautzer litigation. The testimony of Morganroth,

Appendix N

Jeffrey Morganroth, DeLorean, Beeley, and Shaler indicates that Morganroth was fraudulently induced to perform substantial legal services on behalf of Defendants during the time period that Defendants secretly received large sums of money and also during the 2½ year period after the retention of Freidberg based upon DeLorean and Logan's repeated representations that they did not currently possess available funds to satisfy Morganroth's fees but that full payment would be made when assets became available or unrestrained, certifications of amounts due and owing to Morganroth, promises to pay all such amounts, expressions of gratitude and satisfaction, referral of clients, and repeated statements that Morganroth had saved DeLorean's life and Defendants' assets. Further evidence of the Morganroth scheme is found in Stipulation of Facts 30, 32, 34, 35, 53–55, 68, 69, 73, 77, 82, 83–86, 99–103 set out in Exhibit 973.

As part of the plan to perpetrate the Morganroth Scheme, the members of the enterprise committed the predicate acts of Mail Fraud[4] and Wire Fraud.[5]

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4. It is well settled that mail fraud has occurred even if the mailing does not contain any misrepresentations and even if the defendant lacks the actual intent to use the mails so long as the defendant acts with knowledge that use of the mails is reasonably foreseeable in connection with the scheme to defraud. *Pereira v. United States*, 347 U.S. 1 (1954); *United States v. Martino*, 648 F.2d 367, 401 (5th Cir. 1981). The mailing may even be incidental. *Dana Corp.*, 900 F.2d 882, 886 (6th Cir. 1990), *citing*, *Schmuck v. United States*, 109 S. Ct. 1443, 1447 (1989).

5. It is also well established that a violation of the wire fraud statute requires a showing of essentially the same elements as mail fraud; the only difference being that a wire communication is required instead of a mailing. *United States v. Hathaway*, 798 F.2d 902, 908, n.3 (6th Cir. 1986); *United States v. Tarnopol*, 561 F.2d 466, 471–473 (3rd Cir. 1977).

Appendix N

First, the evidence demonstrates that the members of the enterprise caused the mails to be used in furtherance of the Morganroth Scheme in violation of 18 U.S.C. § 1341. DeLorean, Logan, and the other members of the enterprise constantly used the mails in furtherance of the scheme to defraud Morganroth over a ten year period. Morganroth, Beeley, and DeLorean testified to numerous mailings sent by DeLorean and/or Logan to Plaintiffs during a ten year period such as Exhibits 5, 326, 394, 395, 398, 447, 666, 1819, and 2347.

Second, the evidence demonstrates that the members of the enterprise caused the wires to be used in furtherance of the Morganroth Scheme in violation of 18 U.S.C. § 1343. DeLorean, Logan, and the other members of the enterprise constantly telefaxed and telephoned Morganroth in furtherance of the scheme to defraud Morganroth over a ten year period. Morganroth, Jeffrey Morganroth, Beeley, and DeLorean all testified to repeated telephone calls placed by DeLorean and Logan to Plaintiff, an average 6 to 12 telephone calls per day during the ten year period, and countless telefaxes as well during such time period, some of which are in evidence such as Exhibits 334, 395, 411, 726, and 971.

The Weinberg Scheme

The testimony of Weinberg and DeLorean reveals the following: Weinberg and his firm were retained in or about 1987 to provide legal representation to DeLorean and Logan arising out of the DMCL and DRLP Schemes. Weinberg and his firm provided legal services to DeLorean and Logan through January 1993 in reliance upon repeated representations by DeLorean and Logan that all legal fees and expenses would be paid. During the course of providing legal services to DeLorean

and Logan, Weinberg and his firm demanded payment for legal services rendered but the unpaid fees and expenses mounted. When Weinberg and his firm continued to press for payment of the large unpaid balance, DeLorean and Logan repeatedly represented that they did not yet have the funds to satisfy the unpaid balance, but that all amounts would be paid in full as soon as the Logan asset sale was closed. In fact, DeLorean represented that he was an honorable man who always paid his bills. Ultimately, the assets of Logan were sold but no monies were paid to Weinberg or his firm, which left an unpaid balance of $325,000. Instead, during the very same period in which Defendants claimed to lack funds but promised full payment and in which Weinberg's firm continued to perform legal services in reliance upon representation of full payment, Defendants secretly retained Freidberg and paid him approximately $1.3 million to institute and prosecute a sham action against Weinberg and his firm in New York, which action was filed 2½ years after such retention. Weinberg and his firm have since filed counterclaims against DeLorean and Logan, charging RICO violations, fraud, and breach of contract. Further evidence of the Weinberg Scheme is found in Stipulation of Facts 28–34 and 50 set out in Exhibit 973.

As part of the plan to perpetrate the Weinberg Scheme, the members of the enterprise committed the predicate acts of Mail Fraud and Wire Fraud.

First, the evidence demonstrates that the members of the enterprise caused the mails to be used in furtherance of the Weinberg Scheme in violation of 18 U.S.C. § 1341. In fact, Defendants stipulated to such use of the mails in Stipulation of Facts 50 contained in Exhibit 973.

Second, the evidence demonstrates that the members of the enterprise caused the wires to be used in furtherance of the Weinberg Scheme in violation of 18 U.S.C. § 1343. Weinberg testified that during the course of providing legal services to Defendants, Weinberg and his firm often spoke with DeLorean and others over the telephone, which DeLorean confirmed during his testimony as well. Such testimony further reveals that Weinberg and his firm repeatedly discussed with DeLorean over the telephone the fee arrangements and the failure to timely satisfy outstanding legal fees and expenses even after the secret retention of Freidberg. Weinberg further testified that during the course of providing representation, Weinberg received from and sent to Defendants numerous telefaxes, some of which he specifically identified during his testimony.

The Weitzman Scheme

The testimony of Weitzman and DeLorean indicates the following: In or about 1982, Weitzman was retained to defend DeLorean in the California cocaine case which arose out of the commission of the Eureka Scheme, and he eventually was named lead counsel. Thereafter, Weitzman also was hired to represent DeLorean and Logan in the multitude of civil lawsuits arising out of the illicit activities of the enterprise. Weitzman served in that capacity until in or about 1985. In addition, Weitzman also was retained as DeLorean's lead trial counsel in the Detroit criminal action, which focused on the diversion of the $8.5 million from the GPD contract. When Weitzman was retained as lead counsel in the California cocaine case, DeLorean represented that he would be paid $2.5 million for his legal services and expenses, but DeLorean never intended to pay Weitzman. DeLorean attempted to revise history in an effort to avoid the fee arrangement. At one point, it apparently became

clear to DeLorean, according to his testimony, that he might lose his Pauma Valley property to creditors so he transferred the property to Weitzman as a retainer for his fee; however, DeLorean always intended on getting the property back one way or another as revealed by the testimony of Shaler. At the same time, DeLorean represented to Weitzman that he would be paid a minimum of $2.5 million for the California cocaine case whether the property sold for that amount or not, since DeLorean would make up the difference. In addition, DeLorean also represented to Weitzman that he would be paid as much as an additional $5 million for services rendered in future litigation such as the Detroit criminal case. Weitzman only managed to obtain $1.1 million from the ultimate sale of the Pauma Valley property, an amount that did not even cover his expenses, but he could not recover even the remaining minimum balance of $1.4 million for services rendered in the cocaine case, let alone the fees and expenses incurred in connection with the Pauma Valley case or the Detroit criminal trial. Although Weitzman had been betrayed and conned, he eventually wrote off trying to be paid through DeLorean since he wanted nothing to do with DeLorean. In fact, although Weitzman obtained acquittals for DeLorean against great odds in the California cocaine case and the Detroit criminal trial, and provided extensive representation for DeLorean and Logan in connection with major civil lawsuits, DeLorean and Logan not only refused to fulfill their repeated representations regarding attorney fees and expenses, but DeLorean instituted a sham negligence, fraud, and breach of fiduciary duty counterclaim against Weitzman in an attempt to counteract the lawsuit filed by Weitzman's firm for unpaid attorney fees. As stipulated in this case and as DeLorean admitted in his deposition testimony, DeLorean had previously testified under oath that he would have put his head in an oven had Weitzman not continued to provide legal services

through the conclusion of the criminal actions and that no amount of money could repay Weitzman for saving DeLorean's life and for the job that Weitzman performed for him. Further evidence of the Weitzman Scheme is found in Stipulation of Facts 13–21, 41–44, and 70 set out in Exhibit 973.

As part of the plan to perpetrate the Weitzman Scheme, the members of the enterprise committed the predicate acts of Mail Fraud and Wire Fraud.

First, the evidence demonstrates that the members of the enterprise caused the mails to be used in furtherance of the Weitzman Scheme in violation of 18 U.S.C. § 1341. In fact, Defendants stipulated to such use of the mails in Stipulation of Facts 41–42 contained in Exhibit 973.

Second, the evidence demonstrates that the members of the enterprise caused the wires to be used in furtherance of the Weitzman Scheme in violation of 18 U.S.C. § 1343. In fact, Defendants stipulated to such use of the wires in Stipulation of Facts 43–`44 contained in Exhibit 973.

The Eureka Scheme

The testimony of DeLorean reveals that the members of the enterprise conspired to defraud Eureka and its principals out of substantial monies by attempting to cause Eureka and its principals (believed to be mafia by DeLorean) to provide $10 million to the enterprise for the supposed purpose of reopening the DMCL plant in exchange for all of the capital stock of DMCI, which stock supposedly represented ownership interest in the DeLorean car company. *See also*, Exhibit 12. In reality, DMCI was a shell corporation with no assets that had been formed by

the members of the enterprise with the intent of transferring all of the valueless stock to Eureka and its principals in exchange for the funds, which was confirmed by Kimmerly during his testimony. DeLorean testified and Exhibit 12 shows that in the summer and fall of 1982, members of the enterprise in fact agreed to transfer to Eureka and its principals the valueless stock of DMCI in furtherance of the conspiracy. DeLorean further testified that members of the enterprise understood and believed that Eureka was backed by the mafia and that the $10 million was realized through illegal activity. The members of the enterprise further understood and believed that the mafia was interested in the DMCI transaction in order to launder money obtained through illegal means, and consequently the mafia would not and could not protest when they discovered that they had been defrauded since their entire money laundering scheme would be disclosed. DeLorean further testified that in order to further entice Eureka and its principals to provide funds, Logan was offered as a vehicle for Eureka's money laundering operation.

As part of the plan to perpetrate the Eureka Scheme, the members of the enterprise committed the predicate acts of Mail Fraud, Wire Fraud, False Pretenses, and Money Laundering.

First, the testimony of DeLorean and Kimmerly demonstrates that the members of the enterprise caused the mails to be used in furtherance of the Eureka Scheme in violation of 18 U.S.C. § 1341. In fact, Defendants stipulated to such use of the mails in Stipulation of Fact 37 contained in Exhibit 973.

Second, the evidence demonstrates that the members of the enterprise caused the wires to be used in furtherance of the Eureka Scheme in violation of 18 U.S.C. § 1343. In fact,

Defendants stipulated to such use of the wires in Stipulation of Facts 38 set out in Exhibit 973.

Third, the evidence demonstrates that the members of the enterprise attempted to obtain monies under False Pretenses in furtherance of the Eureka Scheme. The testimony of DeLorean reveals that members of the enterprise attempted to defraud supposed members of the mafia out of $10 million under the False Pretenses that the mafia members would receive ownership in the DeLorean car company when in fact they would receive shares in a shell corporation with no assets. *See also*, Exhibit 12.

Fourth, the testimony of DeLorean demonstrates that members of the enterprise were attempting to launder monetary instruments in furtherance of the Eureka Scheme and engaging in monetary transactions in property derived from unlawful mafia activity.

The DRLP Scheme

The testimony of DeLorean and Kimmerly reveals the following: DeLorean Research Limited Partnership ("DRLP") was a limited partnership formed in 1979 for the purpose of overseeing the research and development of the DeLorean automobile. The members of the enterprise concocted a scheme to defraud DRLP and its partners by causing DRLP to enter into a bogus contract with GPD to perform the research and development. GPD was a Panamanian corporation established and controlled by Chapman and Bushell that supposedly was the agent of Lotus Cars Limited ("Lotus") and would subcontract the work to Lotus. The contract called for DRLP to provide approximately $17.8 million to satisfy GPD's fee and

the cost of the research and development. A private placement memorandum was prepared by members of the enterprise and presented to DRLP and its partners for the supposed purpose of soliciting and raising such funds. $8.5 million of the money raised pursuant to the private placement memorandum was secretly diverted by members of the enterprise through an escrow agreement and a complex series of back to back bank transactions. The $8.5 million, which had become approximately $9.4 million with interest,[6] eventually arrived in the United States and was used to pay off loans which had been borrowed to acquire Logan from Thiokol Corporation in 1978, and to purchase jewelry and other investments for DeLorean and Cristina Holdings Corporation. In order to further hide the trail of said funds, Logan then executed a promissory note in favor of Cristina Corporation, which was its parent corporation and wholly owned by DeLorean. Cristina Corporation, in turn, executed a promissory note in favor of DeLorean. Further evidence of the DRLP Scheme is found in Stipulation of Facts 3-10 set out in Exhibit 973.

As part of the plan to perpetrate the DRLP Scheme, the members of the enterprise committed predicate acts of Mail Fraud, Wire Fraud, False Pretenses, and Money Laundering.

First, the evidence demonstrates that the members of the enterprise caused the mails to be used in furtherance of the DRLP Scheme in violation of 18 U.S.C. § 1341. DeLorean testified that the GPD contract, which was the vehicle for perpetrating the DRLP Scheme, was negotiated through the mail. Moreover,

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6. $8.9 million of these funds were funneled into the United States. The $500,000 balance was used to satisfy fees and costs incurred in connection with washing the funds through the laundering mechanism.

numerous letters were sent by DeLorean and others in order to put into motion the complex series of back-to-back bank transactions used to divert the monies as evidenced by Exhibits 31(B) and 77. In addition, Kimmerly testified that he received a letter from DeLorean through the mails as an apparent cover-up attempt of the DRLP Scheme (Exhibit 14).

Second, the evidence demonstrates that the members of the enterprise used the wires in furtherance of the DRLP Scheme in violation of 18 U.S.C. § 1343. DeLorean testified that the diverted funds were wired through a series of complex back-to-back bank transactions from the United Kingdom through Switzerland and the Netherlands to an account in the United States.

Third, the evidence demonstrates that money and property were obtained by members of the enterprise through False Pretenses. DeLorean's testimony reveals that a private placement memorandum was presented to DRLP and its partners for the supposed purpose of soliciting and raising $17.8 million for the research and development of the DeLorean automobile; however, the members of the enterprise intended to secretly divert a significant portion of those funds for their own benefit.

Fourth, the evidence demonstrates that the members of the enterprise laundered monetary instruments in violation of 18 U.S.C. § 1956 through the use of secret back-to-back bank transactions as testified to by DeLorean in an effort to hide the trail of the funds.

Accordingly, a factual issue regarding the pattern of racketeering activity element is created merely by virtue of the predicate acts committed in furtherance of the Morganroth

Scheme. Each of the numerous mailings testified to and/or admitted into evidence as well as each of the repeated telephone calls and telefaxes testified to and/or admitted into evidence constitutes a predicate act of mail fraud and/or wire fraud, respectively. Such predicate acts by virtue of the repeated mailings, telephone calls, and telefaxes satisfy the pattern aspect since evidence of at least two such predicate acts of mail and/or wire fraud have been adduced at trial during a ten year time period. Moreover, the aforementioned predicate acts of mail and/or wire fraud also satisfy the relatedness element since such predicate acts by their very nature aimed at defrauding Morganroth as a victim had the "same or similar purposes, results, participants, victims or otherwise were interrelated" by distinguishing characteristics. *See*, *H.J. Inc.*, 492 U.S. at 240. In addition, such predicate acts satisfy the continuity aspect since they were committed during a period of repeated conduct that methods of commission, spanned and continued over a decade.

Furthermore, the additional predicate acts of Mail Fraud, Wire Fraud, False Pretenses, Money Laundering, and Unlawful Monetary Transactions committed in furtherance of the other schemes are further evidence of a pattern of racketeering activity as well. Such predicate acts also satisfy the relatedness and continuity aspect as previously determined by this Honorable Court in its July 30, 1993 Order and February 28, 1994 Order. The purpose of all of the RICO Schemes was to derive and obtain monies, income, and assets from the manufacture of the DeLorean automobile through the commission of racketeering predicate acts (the DRLP Scheme, DMCL Scheme, and Eureka Scheme) and then to hide and preserve the unlawfully derived and ill-gotten monies and assets through the commission of further racketeering predicate acts

(the Eureka Scheme, the Gorman Scheme, the Creditors Scheme, and the Attorney Schemes). Once again all of such predicate acts not only involved the same or similar purposes, but also the same or similar participants, results, and methods of commission as well. In addition, such predicate acts by their very nature satisfy the continuity aspect since they amount to repeated and continued activity for an extended period of time in excess of 13 years.

C. *More than sufficient evidence has been adduced to establish reasonable reliance.*

With respect to the Morganroth Scheme, Defendants erroneously contend that Plaintiffs have produced no evidence of reliance in connection with Plaintiffs' allegations of mail and wire fraud. However, it appears from Defendants' argument regarding reliance that they have confused the elements of mail and/or wire fraud, apparently taking the position that some misrepresentation must be contained in the communication sent through the mail or wire. As previously discussed, the law is clear that so long as misrepresentations have been made in furtherance of a scheme to defraud, then even if such misrepresentations were not contained in the mailing or wire, actionable mail and/or wire fraud have occurred if the defendant acts with knowledge that the use of the mail or wire is reasonably foreseeable in connection with the scheme to defraud. *Pereira*, 347 U.S. at 1; *Martino*, 648 F.2d at 401.[7] In fact, the mailing or wire may even be incidental to the scheme to defraud. *Dana Corp.*, 900 F.2d at 886, *citing*, *Schmuck v.*

7. As previously discussed, violation of the wire fraud statute requires a showing of essentially the same elements as mail fraud; the only difference being that a wire communication is required instead of a mailing. *Tarnonol*, 561 F.2d at 471–473.

United States, 109 S. Ct. at 1447. In any event, Plaintiffs have presented evidence at trial of repeated misrepresentations made by both of the Defendants to the Plaintiffs, orally (in person and over the telephone), and in writing (sent by telefax and through the mail as well),[8] all of which Plaintiffs reasonably relied upon.

More that sufficient evidence has been adduced at trial to establish a factual issue as to Plaintiffs' reasonable reliance upon Defendants' fraudulent misrepresentations and omissions as evidenced by Stipulation of Facts 35, 52–55, 68–69, 73–77, 82–86 set out in Exhibit 973. In fact, Morganroth and Jeffrey Morganroth testified that Plaintiffs provided and continued to provide legal services to Defendants in reliance upon the following: (i) through January 1993, Defendants repeatedly confirmed and certified specific amounts due and owing to Plaintiffs and made repeated promises to pay such amounts in full; (ii) DeLorean reviewed time sheets on a number of occasions and continually certified specific amounts owing to Plaintiffs and promised payment of such amounts in full; (iii) Plaintiffs requested payment orally and sent written invoices for payment to Defendants, none of which were objected to or questioned in any way; (iv) on each occasion which Plaintiffs requested payment and/or sent written invoices, Defendants promised full payment; (v) Plaintiffs also regularly received from Defendants, through the mail, Logan's audited financial statements which reflected the amount owing by Logan to

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8. Although Defendants erroneously contend that Plaintiffs have presented no evidence in support of the Attorney Schemes, more than sufficient evidence to create a factual issue for jury determination has been produced at trial in support of the Attorney Schemes, including, but not limited to, the Morganroth Scheme, as previously discussed on pages 14–23 herein.

Plaintiffs and which were certified under oath by DeLorean as being true and accurate; (vi) Plaintiffs also received from Defendants a copy by telefax and mail of the Lakevue Funding Commitment executed by DeLorean in late 1990 which represented that Plaintiffs were owed $2.2 million and were to be paid $350,000 on account at that time; (vii) Plaintiffs also received from DeLorean by telefax and mail a copy of a letter sent by DeLorean to the American Arbitration Association in late 1990 that represented that he personally owed Plaintiffs $2.2 million at that time and Plaintiffs were forced to pay his expenses as well; (viii) Plaintiffs were present on several occasions in 1990 and 1991 when DeLorean and Beeley confirmed in sworn testimony under oath that Defendants owed Plaintiffs millions in legal fees; (ix) Plaintiffs received partial payments from Defendants from time to time which Plaintiffs thought evidenced Defendants' good faith, (x) through January 1993, Defendants repeatedly expressed gratitude and extreme satisfaction regarding legal services performed by Plaintiffs; (xi) through January 1993, Defendants repeatedly stated that Morganroth was the best lawyer in the country and had saved DeLorean's life and Defendants' assets; (xii) through January 1993, Defendants referred clients to Plaintiffs; (xiii) Morganroth was present on several occasions in 1990 and 1991 when DeLorean testified under oath as to the extreme competency of Morganroth; and (xiv) through January 1993, Defendants repeatedly represented that they did not have available funds to satisfy the outstanding fees but would do so as soon as assets became available or unrestrained.

Although Defendants imply that Plaintiffs should have known that Defendants were defrauding Plaintiffs, such contention is contrary to the evidence that DeLorean and Logan *intentionally attempted to hide* their true intention from

Plaintiffs. Not only did Morganroth and Kimmerly testify that Defendants intentionally omitted to disclose pertinent facts and misstated or fabricated events during the entire period of legal representation, but DeLorean *admitted that he hid* Defendants' true intent from Plaintiffs for at least 2½ years after secretly retaining Freidberg to sue Plaintiffs because the time was not right. DeLorean even admitted that Defendants intentionally hid their true intent not to pay Plaintiffs the large unpaid balance even after retaining Freidberg to sue Plaintiffs since Defendants wanted Plaintiffs to continue to provide legal services to Defendants, which Defendants knew would not continue if Plaintiffs were aware of Defendants' true intent. Furthermore, Defendants stipulated in Stipulation of Facts 53–55 contained in Exhibit 973 that at all times Plaintiffs rendered legal services to Defendants, they did so with the *intention and expectation* of receiving full compensation. In fact, Morganroth testified that had he known that Defendants had been receiving millions of dollars at the time that Defendants had been representing that they could not presently satisfy their outstanding legal fees or that Freidberg had been secretly retained to sue Morganroth 2½ years earlier while Morganroth performed substantial legal services to Defendants based upon Defendants' repeated representations of payment, or that Freidberg received approximately $1.3 million from Defendants during such 2½ year period while Defendants were representing to Plaintiffs that they could not presently satisfy any legal fees because they had no access to funds, or that Defendants had withheld pertinent information and misrepresented the true facts regarding matters such as the service of process issue in the DSQ Enforcement action, or had Plaintiffs known the true facts regarding other attorney schemes then Plaintiffs certainly would not have continued to provide legal services. Morganroth's testimony makes clear that all of Defendants' fraudulent statements and omissions were discovered after February 2, 1993 when Defendants instituted their New York action, including, but not

limited to, the fact that Freidberg had been secretly retained 2½ years earlier and had been paid in excess of $1.3 million. Defendants further disingenuously contend that the existence of the other Attorney Schemes should have put Plaintiffs on notice. But the evidence adduced at trial reveals that the Morganroth, Kimmerly, and Weinberg Schemes were not consummated until February 2, 1993; that Morganroth was unaware of the existence of the other Attorney Schemes, such as the McConnell, Weitzman, and Berger Schemes until he commenced investigation after February 2, 1993; and that Defendants had provided Morganroth with false facts and omissions regarding Simon, which Morganroth only discovered during his investigation after February 2, 1993 as well.

D. *More than sufficient evidence has been adduced to establish injury to business or property by reason of violation of 18 U.S.C. § 1962.*

Defendants' argument on this point is premised upon a misstatement or misapplication of the law.

It is well established that § 1964(c) authorizes a private suit by "any person injured in his business or property by reason of a violation of § 1962." *See*, 18 U.S.C. § 1964(c); *Sedima*, 473 U.S. at 495. In construing said section of the RICO statute, the United States Supreme Court specifically rejected the concept that "racketeering injury" separate from the injury caused by the predicate acts is necessary to maintain a RICO private suit. *Id.*[9]

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9. The Supreme Court in *Sedima*, 473 U.S. at 497 held:

> Where the plaintiff alleges each element of the violation, the compensable injury necessarily is the harm caused by the predicate acts sufficiently related to constitute a

(Cont'd)

Appendix N

Virtually all of the circuits have followed the mandate of Sedima in construing this provision of the RICO statute. *See, Brandenburg v. Seidel,* 859 F.2d 1179, 1187 (4th Cir. 1988); *Nodine v. Textron, Inc.*, 819 F.2d 347, 348 (1st Cir. 1987); *Corwin v. Marney, Orton Invest.*, 788 F.2d 1063, 1069 (5th Cir; 1986); *Haroco Inc. v. American Nat'l Bank & Trust Co.*, 747 F.2d 384, 398 (7th Cir. 1984), *aff'd*, 473 U.S. 606 (1985). However, the Sixth Circuit, as well as some other courts, have made clear that no "racketeering injury" separate from the harm caused by the predicate acts is necessary to maintain a *§ 1962(c)* claim, but that unlike *§ 1962(c)*, a plaintiff must demonstrate injury stemming directly from the defendant's alleged use or investment of illegally obtained income in connection with a *§ 1962(a)* claim. *Craighead v. E.F. Hutton & Co.*, 899 F.2d 485, 494 (6th Cir. 1990).

Defendants, nevertheless, incorrectly contend that a separate "racketeering injury" is required with respect to all of the substantive RICO sections. But whether one applies *Sedima* to all of the RICO claims here, or adopts the Sixth Circuit's view as to the § 1962(a) claim, the record readily reveals more than sufficient evidence to create a factual issue as to whether Plaintiffs suffered injury to business or property by "reason" of a violation § 1962, as this Honorable Court held in its February 28, 1974 Order.

(Cont'd)

> pattern, for the essence of the violation is the commission of those acts in connection with the conduct of the enterprise. Those acts are, when committed in the circumstances delineated in § 1962(c), an activity which RICO was designed to deter. Any recoverable damages occurring by reason of a violation of § 1962(c) will flow from the commission of the predicate acts.

Appendix N

It is abundantly clear that the evidence in the case at bar more than sufficiently satisfies the dictates of *Sedima*. The testimony of Morganroth and Jeffrey Morganroth indicates that Plaintiffs have suffered the loss of in excess of $5.4 million and their law practice also has suffered the loss of clients, resources, and additional income by reason of Defendants' §1962 violations. In fact, the evidence even satisfies the erroneous standard suggested by Defendants, since the injury to Plaintiffs, business and property was caused by DeLorean's and Logan's acquisition or maintenance of an interest in the enterprise, and operation and management of the enterprise as shown below.

It is also abundantly clear that the evidence more than sufficiently satisfies the dictates of *Craighead* with respect to the § 1962(a) claim since Defendants used and invested income derived from racketeering activity to establish and operate the s:am on Morganroth. *Newmyer,* 888 F.2d at 397. The evidence demonstrates that the Plaintiffs have suffered injuries to business and property stemming directly from DeLorean's and Logan's use or investment of their illegally obtained income.

DeLorean and Logan received approximately $8.9 million from the DRLP Scheme, additional significant amounts from the DMCL Scheme, and, at a minimum, $10.2 million from the Attorney Schemes. Furthermore, DeLorean and Logan attempted to obtain income from the Eureka Scheme, from the Gorman Scheme, and from the Simon Scheme. As the testimony of DeLorean makes clear, a significant portion of the income derived from the DRLP and DMLC Schemes was used to pay the establishment of the enterprise and its operating expenses in carrying out said schemes, including, but not limited to, $500,000 in fees to wash the funds. Moreover, the testimony of DeLorean and Beeley confirms that a significant portion of

the income derived from the DRLP Scheme was used to satisfy the acquisition loan borrowed to purchase the assets of Logan. DeLorean, Beeley, and Schade further testified that a liquid Logan then reinvested $100,000 of such income into the enterprise to be used as the earnest money deposit in furtherance of the Gorman Scheme. In addition, the testimony of DeLorean and Beeley indicates that Logan used such wrongfully derived income to make partial payments on behalf of the members of the enterprise to attorneys in order to string them along. Logan also used the wrongfully derived income to pay Nesseth for services he rendered on behalf of the enterprise, as confirmed by the testimony of DeLorean and Beeley. Furthermore, the testimony of DeLorean reveals that the income which was to be derived from the Eureka Scheme was intended to be used to purchase DMC out of bankruptcy so as to enable the members of the enterprise to resume other schemes to defraud and to prevent the discovery of the schemes already implemented. DeLorean and Beeley's testimony further confirms that DeLorean and Logan used income derived from the Weitzman, Kimmerly, and McConnell Schemes to make partial payments to Morganroth in an effort to string Morganroth along. In reliance on the partial payments, Morganroth continued to provide legal services to DeLorean and Logan, as testified to by Morganroth and Jeffrey Morganroth. In reliance on partial payments received from Cristina Corporation, Cristina Holdings Corporation, DeLorean and Logan, other attorneys such as Kimmerly continued to provide legal services to members of the enterprise, as confirmed by Kimmerly in his testimony. In addition, the testimony of DeLorean and Beeley further reveals that DeLorean and Logan also used such wrongfully derived income to secretly retain Freidberg in 1990 and pay him approximately $1.3 million to institute a sham action against Morganroth in order to avoid payment, and to consummate the

Weinberg Scheme. Freidberg was retained in 1990 with wrongfully derived income that should have been paid to Weitzman, Kimmerly, McConnell, Weinberg, and Morganroth. The sham malpractice action was not filed until Morganroth had resolved certain of DeLorean's and Logan's legal troubles approximately 2½ years later, so that DeLorean and Logan could receive the additional benefits of Morganroth's services without payment. Finally, some of the partial payments to attorneys and the substantial monies paid to Freidberg to perfect the Morganroth Scheme were financed through the DRLP Scheme as evidenced by DeLorean's testimony. DeLorean testified that monies became available to Logan after Logan's acquisition loan was satisfied through the income wrongfully derived from the DRLP Scheme. DeLorean further testified that Logan funneled monies to DeLorean through the Cristina Note, which was executed as part of the DRLP Scheme.

II. THIS HONORABLE COURT ALREADY HAS DETERMINED THAT AS A MATTER OF LAW, PLAINTIFFS *DO NOT* LACK STANDING TO RECOVER FOR DEFENDANTS' RICO VIOLATIONS.

This Honorable Court already rejected, in its February 28, 1994 Order, Defendants' identical contention that Plaintiffs lack standing to pursue a RICO claim against their former clients. After the precise issue was fully briefed and argued by the parties, this Honorable Court ruled that the *Canon* cases and other cases cited by the Defendants such as *Richardson*, *T.C. Theater Corp.*, and *Emile Industries, Inc.* were inapposite to the case at hand, that the motion had to be denied for the reasons briefed and argued by Plaintiffs, and that the Defendants essentially were impermissibly asking to be granted immunity for alleged wrongdoings perpetrated against their attorneys

simply because Plaintiffs were once Defendants' attorneys. *See*, February 28, 1994 Tr. at 29. This Honorable Court further indicated that Defendants had the right to object to the admission of any evidence at trial on the basis of privilege and if such privilege in fact applied then the evidence would be excluded. *Id.* Nevertheless, Defendants disregard and ignore this Honorable Court's definitive ruling and Order on the identical issue simply on the grounds that somehow it is now appropriate to revisit an issue even though the decision was made as a matter of law. Plaintiffs respectfully suggest that the issue should not be re-opened since no grounds exist for reconsidering this Honorable Court's ruling and Order on a matter of law; however, Plaintiffs refer to and hereby incorporate by reference Section I at pages 19–34 of Plaintiffs' Combined Brief in Opposition to Motion for Partial Summary Judgment Against Count I and Motion for Judgment on the Pleading Against Counts I and II ("Plaintiffs' Combined Brief") filed on February 14, 1994, rather than repeat the arguments and law previously set forth in response to the issues. Plaintiffs summarize below the argument and law discussed in detail therein.

Defendants again contend that Plaintiffs' RICO claim should be dismissed because it purportedly violates well-established ethical rules and canons which require that an attorney preserve the confidences and secrets of his clients and former clients. The argument founders on two separate grounds.

First, even after cross-examining Morganroth for 19 trial days, deposing Morganroth for five full days, cross-examining Jeffrey Morganroth, and after collecting thousands of pages of documents from Plaintiffs, Defendants did not identify at trial nor do they do so now *any* "confidences" or "secrets" that

have been or may be revealed by Plaintiffs in the course of pursuing the RICO claim.[10] Defendants address this subject in an entirely generalized and bald conclusion that "Plaintiffs' case is replete with documents obtained during the course of representation of Defendants and extracted from Plaintiffs' files. . . ." Defendants fail to even specify how any of these documents are either confidential or secret or discuss the substance of any of such documents. Defendants apparently believe that the entire subject matter of Defendants' repeated and well-documented frauds was somehow magically transformed into "confidences" and "secrets" merely because there was an attorney-client relationship between Plaintiffs and Defendants when some of Defendants' fraudulent conduct occurred. But that is not the law. The attorney-client privilege protects only confidential "*communications*" between an attorney and a client, not the facts underlying those communications. *Humphreys Hutcheson & Moseley v. Donovan*, 755 F.2d 1211, 1219 (6th Cir. 1985). *Accord*, *United States v. Cunningham*, 672 F.2d 1064, 1073, n.8 (2nd Cir. 1982), *cert den.*, 466 U.S. 951 (1984). Thus, merely funneling documents past counsel will not shield the documents from disclosure. *Sneider v. Kimberly-Clark Corp.*, 91 F.R.D. 1, 4 (N.D. Ill. 1980). Moreover, the privilege does not extend to "information and statements obtained by an attorney from public documents or from third persons." 8 Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure*, § 2017 at 137 (1970) (footnote omitted). Similarly,

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10. Defendants have the burden of establishing that Plaintiffs are properly utilizing confidential material to prosecute their RICO claim. *In re Katz*, 623 F.2d 122, 125 (2d Cir. 1980) (party claiming privilege has burden of establishing its applicability to the particular circumstances); *FTC v. Lukens Steel Co.*, 444 F.Supp. 803, 806 (D.D.C. 1977) ("The party seeking the benefit of the privilege has the burden of demonstrating its applicability.").

"secrets," as it is used in the Code, refers only to detrimental or embarrassing information regarding the client "gained in the professional relationship." MRPC 1.6(a). Contrary to Defendants' unsubstantiated accusation, the evidence used at trial to support Plaintiffs' RICO claim is either a matter of public record or was acquired through investigation after February 2, 1993 or discovery in this action, after the termination of the attorney-client relationship between Plaintiffs and Defendants, as testified to by Morganroth. In fact, this Honorable Court made clear that if any privileged information was attempted to be introduced at trial, Defendants' right to object and exclude such evidence was preserved.[11] Accordingly, any such privileged evidence either was excluded commensurate with the procedure established by this Honorable Court in its ruling and Order, or the privilege or objection was waived by non-assertion.

Plaintiffs' proofs in support of their RICO claim did not consist of Defendants' "confidences" or "secrets," but the live testimony of Kimmerly, Weitzman, Shaler, Morganroth, Jeffrey Morganroth, and Keating,[12] the introduction of deposition

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11. Defendants refer to three Exhibits as somehow being privileged — Exhibits 5, 14 and 66 — but Defendants did not object to their introduction when offered into evidence, nor are any of such exhibits privileged. Exhibit 5 is a telefax sent to Plaintiffs which evidences Defendants' use of the wires in connection with the Morganroth Scheme, and Exhibits 14 and 66 are documents that Kimmerly previously testified to at the behest of Defendants and/or without objection.

12. Defendants disingenuously contend that Plaintiffs have not introduced any live testimony in support of the RICO claim. But six live witnesses in fact so testified. Plaintiffs also attempted to call DeLorean as a seventh live witness through subpoena, but DeLorean refused to honor the subpoena and refuse to appear.

testimony obtained during discovery in this action of DeLorean, Beeley, Mitchell, Thomopolous, Rapetti, Schade, and Weinberg, the admission of documents acquired through investigation after February 2, 1993 and during discovery in this action, and the Stipulation of Facts agreed to by the parties as set out in Exhibit 973. By way of example, perhaps some of the most telling evidence in support of the RICO claim is a document from *opposing* counsel Freidberg's files, produced after this litigation began. That December 1990 retention agreement between DeLorean and Freidberg, as well as the testimony surrounding it, shows that throughout the period in which Defendants repeatedly promised to pay Morganroth, thereby inducing Morganroth to keep working, Defendants had secretly retained Freidberg to bring a malpractice case against Plaintiffs, and had no intention of paying Morganroth. In short, Plaintiffs have had no need to and have not relied on "confidences" or "secrets" to support their claims, nor have Defendants objected to the introduction of testimony or exhibits at trial, on such grounds, pursuant to the procedure established by this Honorable Court.

Second, and equally fatal to Defendants' thesis, this is a case in which DeLorean and Logan contend — originally as affirmative claims in New York and here[13] and now by way of defense and set off — that Morganroth and his firm committed malpractice. The law is well-settled that in such circumstances the client waives the attorney-client privilege and the attorney

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13. Defendants brought affirmative malpractice claims against Plaintiffs in New York state court even before this Michigan action was filed and then as counterclaims in this action. Although these affirmative malpractice claims have now been dismissed on statute of limitation grounds in both forums, Defendants have continued to use the same allegations of malpractice, as well as other new allegations not pled, as a defense and potential setoff in this action.

is *permitted* to use confidences and secrets necessary to prosecute claims for fees and to defend themselves against the charges of malpractice. MRPC 1.6(C)(5) *See also, Tasby v. United States*, 504 F.2d 332, 336 (8th Cir. 1974), *cert den.*, 419 U.S. 1125 (1975).[14] In this instance, any supposed "confidences" and "secrets" that would be used to prove RICO violations are equally germane to the fee claim itself and to the defense of the malpractice allegations as fully discussed on pages 31–33 of Plaintiffs' Combined Brief. In addition, the fact that Defendants repeatedly failed to pay not only Morganroth's but other attorneys' legal fees would be admissible even in the absence of RICO claims under Fed. R. Civ. P. 404(b), which provides that evidence of "other acts" is admissible to show a common plan or intent. *See, e.g., United States v. Ellzey*, 874 F.2d 324, 329 (6th Cir. 1989); *United States v. Ausmus*, 74 F.2d 722, 727–728 (6th Cir. 1985). We know of no case — and Defendants cite none — holding that once the client has opened the door to secrets and confidences by bringing a malpractice charge, the attorney who was wrongfully deprived of his fees is confined to a particular form of action, such as breach of contract, and may not pursue other legitimate avenues of recovery, such as RICO, as well.

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14. Even apart from Defendants' waiver of privilege by bringing malpractice claims, Defendants have also waived the privilege through their conduct of the litigation. They actually *asked direct questions* of Morganroth which they knew would elicit the very communications that they now claim are somehow privileged. Clearly, such questions on behalf of DeLorean and Logan would waive the attorney-client privilege if it were even applicable. *Cf., Drimmer v. Appeston*, 628 F. Supp. 1249, 1251 (S.D.N.Y. 1986) (privilege waived because client allowed attorney to testify to contents of confidential communication).

Appendix N

CONCLUSION

For all of the foregoing reasons, Plaintiffs respectfully request this Honorable Court deny the instant Motion.

Respectfully submitted,

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